

TRIBAL GOVERNMENT LETTERS

Lone Pine Paiute-Shoshone Reservation

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September 2, 2011

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

RE: **DEIS Comments, Los Coyotes Band of Cahuilla and Capeno Indians
Fee-to-Trust and Casino-Hotel Project**

The Lone Pine Paiute-Shoshone Reservation sympathizes with the struggle of the Los Coyotes to improve their impoverished sub-standard conditions and to develop their economy to support their people.

However, there are several small tribes in southern California that are also working to improve the living conditions of their people. The Los Coyotes should not infringe on their ancestral homelands at the expense of these other tribes.

The Los Coyotes were not part of the Treaty of Ruby Valley, ratified by Congress in 1866. This treaty established the ancestral homelands of the Shoshone People, including the Barstow, California area.

We believe the Bureau of Indian Affairs must fulfill their trust responsibility to uphold this treaty and to protect the interests of the Shoshone people. Therefore, the Lone Pine Paiute-Shoshone opposes Alternative A and Alternative B considered in the Draft Environmental Impact Statement.

Respectfully,



Melvin R. Joseph, Chairman
Lone Pine Paiute-Shoshone Reservation

Cc: LPPSR Officers
Shane Chapparosa, Los Coyotes Chairman
Jodi Gillette, Deputy Assistant Secretary, Indian Affairs

T1-1

September 14, 2011

BY E-MAIL and FEDERAL EXPRESS

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

Re: DEIS Comments, Los Coyotes Band of Cahuilla and Cupeño Indians Fee-to-Trust and Casino-Hotel Project

Dear Director Dutschke:

Please find enclosed the Los Coyotes Band of Cahuilla and Cupeño Indians' (Tribe) comments on the Draft Environmental Impact Statement/Tribal Environmental Impact Report (DEIS/TEIR) for the Tribe's Fee-to-Trust and Casino-Hotel Project in Barstow, California. As you know, the Tribe and BIA are working together to prepare a joint EIS/TEIR pursuant to the requirements of the National Environmental Policy Act (NEPA) and what we expect will be required in the Tribe's and the State of California's Tribal/State Gaming Compact, based on other current Tribal/State compacts. The Tribe is serving as the lead agency for purposes of TEIR compliance, and also is participating as a cooperating agency in BIA's NEPA compliance process.

We request that these comments be incorporated into the Administrative Record and addressed as appropriate in the Final EIS/TEIR document. We look forward to working with your staff and providing whatever assistance is necessary in this regard. If you have any questions, please contact me at the above number, or Mark Radoff, local counsel for the Tribe, at (760) 746-8941.

Very truly yours,


Suzanne R. Schaeffer

Enclosure

cc: Mark Radoff
John Ryzdik, BIA Pacific Regional Office
Ryan Lee, AES

T2-1

THE LOS COYOTES BAND OF CAHUILLA AND CUPEÑO INDIANS

COMMENTS ON THE DEIS/TEIR FOR THE LOS COYOTES FEE-TO-TRUST AND CASINO-HOTEL PROJECT

SEPTEMBER 13, 2011

The Los Coyotes Band of Cahuilla and Cupeño Indians (the Tribe or Los Coyotes) submit these comments on the July 1, 2011 Draft Environmental Impact Statement and Tribal Environmental Impact Report (DEIS/TEIR), which was jointly prepared pursuant to the National Environmental Policy Act (NEPA) and the expected provisions of the Tribe's gaming compact with the State of California (based on other current State/Tribal compacts), to assess the environmental impacts of the Tribe's proposed fee-to-trust acquisition and casino project on a parcel of land totaling approximately 23.1 acres in the City of Barstow, California. The Bureau of Indian Affairs (BIA) is the lead agency for NEPA compliance, and the Tribe is the lead agency for compliance with the TEIR requirements. The Tribe also is participating as a cooperating agency, together with the City of Barstow, EPA and the National Indian Gaming Commission (NIGC) in BIA's NEPA compliance process. The Tribe requests that these comments be included in the Administrative Record for the project, and be addressed as appropriate in the Final EIS/TEIR.

GENERAL COMMENTS

At the outset, it is important to note that the proposed federal actions requested by the Tribe (BIA trust acquisition of land in Barstow, issuance of a "two-part determination" under Section 20 of the Indian Gaming Regulatory Act (IGRA) and the possible approval of a gaming management contract by the NIGC), which are described in detail the DEIS/TEIR, are extremely important for the future well being of the Tribe. As described in the DEIS/TEIR, the remote location, excessively steep and rugged terrain and environmental sensitivity of the Reservation have made meaningful economic development there difficult if not impossible, and the Tribe had no alternative but to seek land off-reservation for meaningful economic development opportunities. The Tribe was careful in choosing that land, and made sure to select land that was as far away from other tribes' gaming facilities as possible, to avoid creating any hardships for other tribes. Los Coyotes began working with the City of Barstow in 2002, after the City initially approached the Tribe. After conducting due diligence, both the City and the Tribe concluded that development of an Indian gaming project in Barstow would serve the needs of both economically distressed communities. Therefore, the proposed project serves not only the Tribe's interests, but those of the local community as well.

As described in the DEIS/TEIR, the proposed trust acquisition and casino-hotel project in Barstow will provide the Tribe with a much-needed source of stable revenue that will be used to strengthen and support its Tribal government; fund a variety of social, housing, governmental, administrative, educational, and health and welfare services to improve the quality of life of Tribal members; and provide capital for other economic development and investment opportunities. It will allow the Tribe achieve economic self-sufficiency and achieve Tribal self-determination. The project also will provide employment opportunities for the Tribal and non-Tribal community, including the creation of on-reservation job opportunities and training; fund local government agencies, programs and services; and provide the Barstow community with a wide range of economic benefits, including new jobs with benefits and increased spending and economic opportunities.

In short, the proposed project described in the DEIS/TEIR will have significant benefits for both the Tribe and the City of Barstow, without any unmitigated adverse impacts. The Tribe believes that the DEIS accurately describes the proposed project and alternatives, provides a thorough analysis of potential impacts and discusses appropriate and practicable mitigation. Nevertheless, the Tribe offers the following comments in an effort to ensure that the Final EIS/TEIR will be as complete and accurate as

T2-1
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possible. The following comments first address certain comments made during the public hearing, and then provide specific comments on the DEIS/TEIR, following that document's organizational structure.

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COMMENTS IN RESPONSE TO PUBLIC HEARING

Numerous public comments were offered at the hearing on the DEIS/TEIR, with the overwhelming number demonstrating the strong support of the local community for the proposed project. Although many comments did not go to the merits of the DEIS/TEIR, but rather simply indicated a desire to see either Alternatives A or B ultimately approved, the Tribe believes that the Final EIS/TEIR should incorporate and reflect the views of those in the local community that were focused on the positive economic and other benefits for the City of Barstow. For example, the DEIS/TEIR should incorporate comments from the local community college president that there will be positive local socioeconomic impacts with regard to educational programs that will be offered by the college, and the views of the community hospital president and other local medical professionals that there will be positive impacts upon the health care services available for local residents. One commenter also correctly noted that the proposed project's location on an Interstate freeway would lead to fewer greenhouse gas emissions and traffic concerns than the construction of a facility on the Tribe's reservation, which would require visitors to make a long trip on a two-lane road into the mountains. This comment also should be incorporated and reflected in the Final EIS/TEIR.

T2-2

With regard to certain of the comments offered in opposition to the proposed project, specifically those by the Picayune Rancheria of Chukchansi Indians and the Chemehuevi Indian Tribe, the purpose of the public hearing on the DEIS/TEIR is to allow parties to comment on the analysis of environmental and related impacts on the affected community. Here, Picayune is located more than 250 miles and nearly a 5-hour drive away from Barstow, and Chemehuevi is nearly 150 miles away. Their respective comments incorrectly characterize federal Indian gaming policy and reflect the anti-competitive preferences of wealthy gaming tribes, have no relevance or value to the NEPA analysis, and should be disregarded. To the extent that any of their comments do merit response, the Tribe asks that any discussion of the supposed intent of the voters in enacting California's Proposition 1-A in the Final EIS/TEIR reflects that this state law does not and cannot trump federal law. The Tribe also requests that any analysis of the fact that the Tribe's reservation is in a different county than the proposed project make clear that such boundaries are irrelevant to the fee-to-trust and two-part determination analysis under applicable law and regulations. And to the extent that the Final EIS/TEIR examines claims by these tribes that members of Los Coyotes live too far from Barstow and/or would "lose their cultural identity" if they take jobs in that community, the Tribe notes, as indicated in the DEIS/TEIR, that the vast majority (75%) of Los Coyotes Tribal members do not live on the reservation, and further, that the majority of those adult Tribal members living off the reservation in California live within a 70-mile radius to the City of Barstow. Finally, the Tribe wishes to state for the record that it finds these comments both offensive and inappropriate – it is outrageous that other Tribes would presume to tell Los Coyotes what economic development opportunities it should pursue, or how it should seek to meet its objectives of economic self-sufficiency, self-determination, and providing better opportunities for its members. The Los Coyotes Tribal government is entirely capable of making its own decisions regarding the well-being of the Tribe and its members, and fully intends to exercise its sovereign right to engage in the same economic development opportunities that have benefited other tribes like Picayune and Chemehuevi.

T2-3

In addition, one commenter noted that a website, www.loscoyotes.info, shows a public campground operating on the Los Coyotes reservation which demonstrates that adequate tribal income can be earned from such an activity. The reality is quite the opposite: this website is operated by a third party, the campground has been a business failure, and Alternative D addresses the impacts of a larger, more significant campground project which is estimated to generate very limited revenues that would not provide meaningful economic development sufficient to meet the Tribe's needs. The Final EIS/TEIR should account for the lack of viability of this enterprise. The same commenter also noted that the Eagle Rock Training Center ("ERTC") is currently operating on the Tribe's reservation, again supposedly demonstrating that the Tribe can benefit from economic development without the proposed project. The Tribe asks that the Final EIS/TEIR address the ERTC, which, contrary to the commenter's suggestion, in fact renders Alternatives C and D less viable (and is very likely an incompatible use with those

T2-4

Alternatives), demonstrates the lengths to which the Tribe must go to engage in any sort of economic activity on its remote, steep, and virtually undevelopable reservation, and fails to provide adequate revenues or jobs for the Tribe or its members.

T2-4
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SPECIFIC COMMENTS

Executive Summary

This section provides a good, concise summary of the alternatives and impacts. The TEIR Process subsection on page *i*, however, currently contains the inaccurate statement that the Tribe's compact, which it plans to negotiate with the Governor, will "mandate the location within the Tribe's reservation at which the Tribe may operate a Class III gaming facility...." In fact, the Tribe's prior compact with the State (which was not ratified by the legislature) was site-specific for the Barstow site and did not authorize on-reservation gaming, and the Tribe expects that its new compact will contain similar language. Therefore, the language regarding the Tribe's compact should be revised to delete the reference to an on-reservation location, and state simply that the compact will specify the location at which the Tribe may operate a Class III gaming facility.

T2-5

In addition, in Section ES.5, the Summary Matrix, there are several issues that should be addressed. Under the heading "Biological Resources", subheading "Federally Listed Species", the text for Alternative A should say that with the incorporation of recommended mitigation measures, Alternative A (not Alternative B) may affect, but is not likely to adversely affect the desert tortoise. Under the heading "Socioeconomic Conditions and Environmental Justice", subheading "Property Taxes", in addition to the other MSA sections noted, a reference to Section 13 of the Tribe's Municipal Services Agreement with Barstow (MSA) should be included because Section 13 provides for gaming revenue payments to the City to offset the potential impacts to City revenues from the Tribe's land being taken in trust. Under the heading "Cumulative Effects", subheading "Socioeconomic Conditions" the chart indicates that implementation of Alternatives A and B "would result in minimal adverse cumulative effects to socioeconomic conditions." See page *xliv*. This summary conclusion seems inconsistent with the cumulative impacts analysis in Section 4.13, on pages 4.13-15 and 4.13-27, which concludes that "no significant cumulative socioeconomic effects would result" from Alternatives A and B. This inconsistency should be addressed. Finally, under the heading "Indirect Effects", subheading "Cultural Resources", page *xlvii*, the words "would minimal indirect effects" should be deleted from the listed mitigation measure (compliance with Section 106 of the National Historic Preservation Act).

T2-6

T2-7

T2-8

Chapter 1.0 Introduction

This chapter provides an overview of the project, the purpose and need for the project, and an outline of the NEPA and TEIR processes. In Section 1.1, Summary of the Proposed Action and EIS Process, the Tribe would recommend revising the language to say that NIGC reviews and approves all gaming management contracts, rather than all "gaming development and management contracts", because development agreements in fact are not subject to NIGC approval. In Subsection 1.1.1, TEIR Process, the text again states that the gaming compact will mandate the location within the Tribe's reservation at which the Tribe may operate a Class III gaming facility. As explained above in the comments on the Executive Summary section, this language should be revised to state that the gaming compact will specify the location at which the Tribe may operate a Class III gaming facility.

T2-9

Chapter 2.0 Alternatives

This chapter describes the proposed project and project alternatives. In Section 2.2.2, Alternative B – Barstow Reduced Casino-Hotel Complex (Proposed Project), Table 2-3 and the text describing the alternative are inconsistent – the table incorrectly lists 3 service bars and the text mentions 2 service bars – the table should be revised to reflect that there would be 2 service bars.

T2-10

Chapter 3.0 Affected Environment

Section 3.6 Socioeconomic Conditions and Environmental Justice

This section describes the existing socioeconomic conditions of the Barstow and Los Coyotes sites and surrounding areas. Section 3.6.1 describes the characteristics of the Barstow site/San Bernardino County. The subsection titled "Property Taxes" on page 3.6-3 incorrectly states that the Barstow site is located on "four" San Bernardino County tax parcels (although it correctly lists the three tax parcel numbers comprising the site) – the text should be revised to say "three" tax parcels comprise the Barstow site.

T2-11

Chapter 4.0 Environmental Consequences

Section 4.2 Water Resources

This section discusses potential impacts on water quality from development of the various alternatives, including drainage issues. Section 4.2.1 discusses impacts from Alternative A (the larger Barstow casino-hotel development alternative), and notes in Table 4.2-1 that the predicted runoff rate for Alternative A for a 10-year and 100-year storm, respectively, would be 81.78 cfs and 133.76 cfs (without detention measures). In Section 4.2.2, which discusses impacts from Alternative B (the reduced Barstow casino-hotel development/proposed project), the predicted runoff rates for Alternative B are 83.5 cfs and 136.8 cfs for a 10-year and 100-year storm, respectively. Although Alternative B would include 150 additional surface-level parking spaces (but no underground parking), the overall square footage of Alternative B is about 116,000 square feet less than that of Alternative A, so it is not clear why the runoff rate would be greater for Alternative B. It might be useful to clarify why that is the case. In addition, the description of Alternative B in Chapter 2 notes that it would have identical drainage features as Alternative A, although "less conveyance and detention capacity would be required." See p. 2-18. This seems somewhat inconsistent with the description of greater runoff rates for Alternative B mentioned in Section 4.2.2.

T2-12

Section 4.3 Air Quality

This section discusses potential impacts on air quality from construction and operation of the various alternatives. Section 4.3.1 discusses the methodology for the analysis, and notes that pollutants of concern during construction are nitrogen oxides (NOx), reactive organic gases (ROG), and particulate matter less than 10 microns in diameter (PM-10). PM-10 emissions primarily result from fugitive dust, which is produced during grading activities. Section 4.3.4 discusses impacts from Alternative C, the Los Coyotes Reservation casino, but does not mention that construction of Alternative C would result in the generation of PM-10. Given the relatively arid climate and steep, rugged terrain on the Reservation, as well as the fact that grading of approximately 19 acres of land will be necessary to build a 25,000-foot casino, it is not clear why there would be no PM-10 emissions produced during construction of Alternative C (or during construction of Alternative D, the Los Coyotes Reservation campground discussed in Section 4.3.5). A brief explanation would be useful.

T2-13

Section 4.6 Socioeconomic Conditions and Environmental Justice

This section discusses the potential socioeconomic impacts from construction and operation of the various alternatives, which are largely beneficial impacts, as well as environmental justice considerations. In Section 4.6.1, Alternative A – Barstow Casino-Hotel Complex, on page 4.6-2 under the heading "Operation", the second sentence notes the projected revenue and the estimated annual number of patrons (2,285,364), but the word "patrons" was inadvertently left out of the sentence and should be inserted. In the same section, under the heading "Community Impacts", the discussion of impacts to public schools on page 4.6-13 states that Alternative A is estimated to result in the relocation of approximately 167 employees to the San Bernardino County region and references the direct employment impacts analysis for that estimated relocation figure. But the direct employment impacts section does not include that estimate, or at least it does not do so in any obvious way. In fact, the summary of the employment effects section states that construction and operation of Alternative A would

T2-14

T2-15

“generate substantial employment opportunities that would be primarily filled by the available labor force in Barstow and San Bernardino County ... and that given the projected unemployment rate and dynamics of the local labor market, San Bernardino County is anticipated to be able to easily accommodate the increased demand for labor during the operation of Alternative A,” see page 4.6-10 – in other words, the employment analysis seems to suggest that very few if any employees will have to relocate. Thus, it is not clear where the 167 employee relocation figure comes from, and it calls into question whether the impacts to local public schools are overstated. This should be addressed.

T2-15
Cont.

In Section 4.6.3, Alternative C – Los Coyotes Reservation Casino, under the heading of “Substitution Effects” on page 4.6-20, the discussion indicates that the estimated substitution effect of Alternative C would be approximately 22 percent of total projected gaming revenue (about \$1,743,908), but that this would be a negligible portion of total economic activity generated by Alternative C. The following sentence then states that “[t]his impact would be comparable, but to a lesser extent than Alternative A, and would be less than significant.” Given that the estimated substitution effect for Alternative A is 15.4 percent of total projected gaming revenue (approximately \$20,864,893), the conclusion in this sentence seems less than accurate. In percentage terms the impact may be comparable but it is not less; in overall revenue terms it is certainly far less but it is not necessarily comparable. The Tribe suggests that this sentence be revised to make the meaning clearer.

T2-16

Section 4.6.4, Alternative D – Los Coyotes Reservation Campground analyzes the economic and social effects of the on-reservation non-gaming alternative, and raises several issues that should be addressed. First, in the discussion of economic effects, under the heading “Construction”, the first sentence states that this alternative would involve construction of a campground “instead of a casino and hotel”. See page 4.6-25. This sentence suggests, incorrectly, that the on-reservation casino development alternative includes a hotel. The reference to a hotel should be deleted to make clear that the on-reservation casino alternative involves development only of a casino.

T2-17

Second, under the heading “Operation” in the discussion of substitution effects, the fourth sentence appears to be intended to make the point that the potential substitution effects of Alternative D are speculative or difficult to estimate, but the wording is very unclear and this sentence needs to be revised to clarify its meaning. Third and finally, in the discussion of employment impacts, under the heading “Operation”, the paragraph incorrectly refers twice to Table 4.6-4, which addresses construction impacts, not operation impacts – the references should be to Table 4.6-6.

T2-18

Section 4.9 Public Services

Section 4.9.1 discusses impacts to public services that would result from the development of Alternative A, the Barstow Hotel-Casino Complex. On page 4.9-2, in the discussion of wastewater service, the analysis notes correctly that the Tribe would pay for the cost of any needed sewer infrastructure to serve the project. The Tribe suggests that this sentence should refer to Section 7 of the Tribe’s MSA with the City of Barstow, in which the Tribe agrees to pay for sewer infrastructure. This same reference to Section 7 of the MSA should also be included in the discussion of sewer infrastructure and the Tribe’s payment for the cost in Section 4.9.2, Alternative B – Barstow Reduced Casino-Hotel Complex, on page 4.9-5. Also in Section 4.9.2, under the heading of fire protection and emergency medical services, the discussion should include references to the Tribe’s commitment, as provided in the MSA, to pay one half of the actual costs of training fire personnel if the hotel/casino structure exceeds four stories, and to dedicate or arrange for dedication of two acres of non-federal land near the project site for fire or police station use.

T2-19

In Section 4.9.3, which analyzes the service impacts from Alternative C, the on-reservation casino, under the heading of “Law Enforcement Services”, the discussion states that “additional demands to law enforcement would not be offset by property tax or development fees and thus the Tribe should compensate the Department based on the level of service needed.” It is not clear from the analysis what the basis for this conclusion is, and while the Tribe would be willing to negotiate an agreement for appropriate compensation based on the services provided (as noted later in the text), it is not appropriate to make this kind of blanket recommendation about what the Tribe’s compensation should be in a NEPA document, and it should be removed.

T2-20

Section 4.13 Cumulative Impacts

Section 4.13 does a thorough job analyzing the potential cumulative impacts that could result from implementation of the alternatives. Cumulative impacts are effects to the environment resulting from the incremental effect of the proposed action when added to other past, present and reasonably foreseeable future actions.

T2-21

Section 4.13.2 addresses incremental effects of Alternative A on resources that could occur in conjunction with other actions or projects. Under the heading "Land Use" (page 4.13-19), the discussion states that Alternative A (Barstow Casino-Hotel Complex), would not be subject to local land use policies, but would not disrupt or otherwise conflict with neighboring land uses and would not have adverse cumulative effects on land use planning. One of the reasons for this is that the Tribe has agreed to develop tribal projects on the trust land in a manner consistent with the Barstow Municipal Code pursuant to its MSA with the City. The Tribe recommends that the MSA be mentioned in this discussion of cumulative land use impacts so that the analysis is more complete and better supported. In addition, under the heading "Municipal Services", subheading "Fire Protection and Emergency Services" (page 4.13-20), the discussion should note that under the MSA the Tribe has committed to pay one half of the actual costs of training fire personnel if the hotel/casino structure exceeds four stories, in addition to the other fire protection/emergency services obligations under the MSA that already are mentioned.

T2-22

Section 4.13.3 addresses the potential cumulative effects of Alternative B, the reduced Barstow Casino-Hotel Complex. Under the heading "Climate Change", subheading "Strategies and Emission Estimates", the smaller project during operations would be expected to emit approximately 36,209 tons per year of CO2 from mobile and area sources. In Section 4.13.2 above, the CO2 emissions from Alternative A were estimated to be approximately 36,315 tons per year. Given the reduced size and reduced number of trips generated by Alternative B, this estimated CO2 emissions figure seems high, particularly in relation to the figure for Alternative A. Further, when comparing the charts showing estimated operational greenhouse gas emissions for Alternatives A (Table 4.13-5) and B (Table 4.13-14), the chart for Alternative B shows a higher tons per year of CO2 emissions for mobile sources (35,780) than the chart for Alternative A (35,686). The Alternative A chart also shows fewer miles traveled, less methane and nitrous oxide emissions from mobile sources, and less total carbon dioxide equivalent emissions from mobile sources than does the chart for Alternative B. These figures do not seem to be correct, given that Alternative B is a reduced development with a smaller gaming floor, fewer hotel rooms, less parking, and is expected to generate fewer trips/visits. The Tribe requests that these figures be examined for accuracy and the cumulative climate change analysis be revisited before the Final EIS/TEIR is produced.

T2-23

Also in Section 4.13.3, under the heading "Land Use", the Tribe again recommends that the discussion mention the MSA and the Tribe's commitment to develop tribal projects on the trust land in a manner consistent with the Barstow Municipal Code, so that the cumulative land use analysis is more complete and better supported.

T2-24

In Section 4.13.4, which analyzes cumulative impacts resulting from development of Alternative C, the Los Coyotes Reservation Casino, the terminology "potentially cumulatively considerable adverse effects" appears for the first time in the cumulative impacts analysis. The Tribe is concerned that this language is confusing and not helpful, as its meaning is not explained nor is it clear what the term "considerable" adds to the analysis. It also is not clear why this particular terminology is used only in Section 4.13.4. This language should be removed or revised to be consistent with the other terminology in Section 4.13.

T2-25

In addition, Section 4.13.4 purports to analyze the potential cumulative impacts of Alternative C in relation to potential development on or in the vicinity of the Los Coyotes Reservation, but it does not discuss or list any such planned development on or in the vicinity of the Reservation. The absence of any specific planned development makes it difficult to present a meaningful analysis of cumulative impacts, and the Tribe suggests that this issue be examined and addressed in this Section. The Tribe is willing to provide information about planned development on the Reservation as necessary. This same comment

T2-26

applies to the analysis in Section 4.13.5, which addresses cumulative impacts for Alternative D, the Los Coyotes Reservation Campground. Finally, at the bottom of page 4.13-30, the text incorrectly refers to the "Rancheria" rather than the Reservation, which should be corrected.

T2-26
Cont.

San Manuel Band of Mission Indians

July 25, 2011

U.S. Department of Interior,
Bureau of Indian Affairs
Pacific Region,
2800 Cottage Way,
Room W-2820
Sacramento, CA 95825

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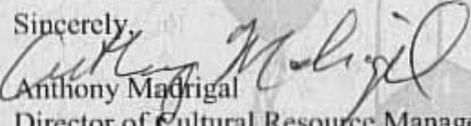
Bureau of Indian Affairs
Southern California Agency
1451 Research Park Dr.
Riverside CA 92507
Via Fax 951 276 6641

Re: Los Coyotes Band of Cahuilla and Cupeno Indians Environmental Impact Statement

Gentlepersons:

The San Manuel Band of Mission Indians hereby requests a copy of appendix N (Cultural Resource Appendix) of the Los Coyotes Band of Cahuilla and Cupeno Indians Environmental Impact Statement Fee to Trust and Casino-Hotel Project March 2011. The Tribe remains concerned with any possible impacts to cultural resources on its traditional lands.

T3-1

Sincerely,

Anthony Madrigal
Director of Cultural Resource Management

San Manuel Band of Mission Indians

September 15, 2011

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

Re: San Manuel Band of Mission Indians Comments to Draft Environmental Impact Statement for the Proposed Los Coyotes Band of Cahuilla and Cupeño Indians' 23-Acre Fee-to-Trust Transfer and Casino-Hotel Project, City of Barstow, San Bernardino County, CA

Dear Ms. Dutschke,

The Comments document mailed and faxed to your attention September 14, 2011 contained a clerical error that has been corrected in the attached. I have included correspondence with Mr. John Rydzik for your reference.

T4-1

Sincerely,

Patti Putnam
Patti Putnam

cc: Mr. John Rydzik, Bureau of Indian Affairs

Patti Putnam

From: Patti Putnam
Sent: Thursday, September 15, 2011 4:04 PM
To: 'Rydzik, John'
Subject: RE: San Manuel Band of Mission Indians - Comments to the Draft Environmental Impact Statement for the Proposed Los Coyotes Band of Cahuilla and Cupeno Indians' 23-Acre Fee-to-Trust Transfer and Casino-Hotel Project, City of Barstow, San Bernardino County, San Manuel Comments to EIS for Proposed Los Coyotes Fee-to-Trust Transfer and Hotel-Casino Project Barstow 09.14.11.ClericalEdit09.15.11pdf.pdf

Attachments:

Dear Mr. Rydzik,

Thank you for agreeing to accept the clerical revision I spoke with you about this morning. I have attached the full document and for easy reference call your attention to the insertion of the following citation and language that had been missing from page 3, paragraph 1:

*[[Cal. Pub. Res. Code §§ 5097.94(a) & 5097.96). There are approximately 30 sites within the] **historic lands of the greater Serrano Indian Nation that are identified as sacred to the Tribe, including sites within the Barstow area. These sites are listed in the NAHC sacred lands file.**

Your consideration is greatly appreciated. I will forward the replacement document to the attention of Ms. Amy Dutschke as well as other copied recipients and again, respectfully ask that you confirm receipt at your earliest convenience.

Sincerely,
Patti Putnam
Senior Executive Administrator
San Manuel Band of Mission Indians
(909) 864-8933, ext. 3090

From: Rydzik, John [<mailto:John.Rydzik@bia.gov>]
Sent: Thursday, September 15, 2011 6:41 AM
To: Patti Putnam
Subject: RE: San Manuel Band of Mission Indians - Comments to the Draft Environmental Impact Statement for the Proposed Los Coyotes Band of Cahuilla and Cupeno Indians' 23-Acre Fee-to-Trust Transfer and Casino-Hotel Project, City of Barstow, San Bernardino County,

Thank you for your comments.

From: Patti Putnam [<mailto:PPutnam@SanManuel-NSN.Gov>]
Sent: Wednesday, September 14, 2011 2:40 PM
To: Rydzik, John
Subject: San Manuel Band of Mission Indians - Comments to the Draft Environmental Impact Statement for the Proposed Los Coyotes Band of Cahuilla and Cupeno Indians' 23-Acre Fee-to-Trust Transfer and Casino-Hotel Project, City of Barstow, San Bernardino County, CA.

Dear Mr. Rydzik,

The attached is submitted on behalf of San Manuel Band of Mission Indians as the Tribe's formal comments to the Draft Environmental Impact Statement for the Proposed Los Coyotes Band of Cahuilla and Cupeno Indians' 23-Acre Fee-to-Trust Transfer and Casino-Hotel Project, City of Barstow, San Bernardino County, CA.

A paper copy has also been mailed this date to Amy Dutschke, Regional Director – Pacific Regional Office of the Bureau of Indian Affairs.

Please contact us should you have comments or require anything additional relative to this comment process.

I respectfully ask for your confirmation of receipt at your earliest convenience.

Very truly yours,
Patti Putnam
Senior Executive Administrator
San Manuel Band of Mission Indians
(909) 864-8933, ext. 3090

T4-1
Cont.

San Manuel Band of Mission Indians

Via Email to: John.Rydzik@bia.gov

September 14, 2011 (clerical edit 09/15/11*)

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

Re: San Manuel Band of Mission Indians Comments to Draft Environmental Impact Statement for the Proposed Los Coyotes Band of Cahuilla and Cupeño Indians' 23-Acre Fee-to-Trust Transfer and Casino-Hotel Project, City of Barstow, San Bernardino County, CA

Dear Ms. Dutschke:

The San Manuel Band of Mission Indians, a federally recognized tribe (Tribe), urges the Bureau of Indian Affairs (BIA) to reject the application to acquire lands into trust for a proposed casino project for reasons that are presented through these comments on the Draft Environmental Impact Statement (DEIS) and the Tribal Environmental Impact Report (TEIR) in regard to the pending fee to trust application for a Casino Hotel Project of the Los Coyotes Band of Cahuilla-Cupeño Indians (Project) proposed for Barstow, California. The Tribe also urges you to specifically find that the land for this proposed Project is located within the Tribe's ancestral and historical territory, and that the Los Coyotes Band of Cahuilla-Cupeño Indians (Los Coyotes), located in San Diego County more than 120 miles away from the Project site, does not possess modern and historical connections to Barstow. Moreover, the DEIS and TEIR do not meet the standards set forth by the National Environmental Policy Act (NEPA) because they fail to adequately address the Project's impacts on Serrano cultural resources, on sensitive wildlife species and on environmental elements.

The Bureau of Indians Affairs is required under federal law to comply with NEPA when reviewing an application to take land into trust. The BIA cannot comply with NEPA when the applicant tribe fails to provide sufficient information and analysis on environmental impacts. Where, as here, the environmental documents provide an inaccurate and insufficient analysis, the BIA's obligations under NEPA are not met, and the application process cannot continue. The Tribe respectfully requests a finding that the DEIS and TEIR do not give the BIA the information required to comply with NEPA.

The Tribe's position is consistent with recent decisions by the Department of the Interior. On September 2, 2011, Assistant Secretary for Indian Affairs Larry Echo Hawk rejected two (2) lands-into-trust applications for off-reservation Indian gaming citing lack of modern and historical connections to the proposed gaming sites by the petitioning tribes. Additionally, the Assistant Secretary rejected the two applications because the proposed sites were more than 100 miles from the existing reservations of the petitioning tribes.

To be clear, while the Tribe fully supports efforts by Indian tribes to reacquire their aboriginal lands to the greatest extent possible, we cannot support tribes encroaching into the aboriginal territories of other tribes to create brand new reservations for any purpose, including gaming.

T4-2

The Proposed Los Coyotes Casino Sites Are within the Historic Territories of the Serrano Indians.

The Tribe's historical ties to the Project area are extensively documented through contemporary, historical and archaeological records. The San Manuel Band of Mission Indians is a tribe of Serrano Indians with its reservation located in San Bernardino County. The people of San Manuel call themselves the *Yuhaviatam*, which means "People of the Pines". The Yuhaviatam are one of several bands of the greater Serrano Indian Nation. The aboriginal lands of the greater Serrano Indian Nation consist of a large, historically-established geography that stretches from east of Los Angeles to Twenty-nine Palms and north of Barstow to the San Bernardino Valley (see attached maps.) This aboriginal area includes most of present-day San Bernardino County in southern California, which is the largest land-based county in the U.S., encompassing more than 20,000 square miles.

The proposed Project at Barstow is located well within the traditional lands originally inhabited by the Serrano people. These lands continue to possess cultural significance to the Tribe, and it continues to maintain strong connections with its traditional lands and important cultural sites and places within these lands, which are central to the Tribe's culture, history and identity. The Tribe maintains an active cultural resource management program that endeavors to preserve these lands, such as involvement in city and county general plan amendments, consultation with the Federal Railroad Administration regarding the proposed Desert Xpress project and consultation with the United States Department of Agriculture, San Bernardino National Forest regarding the Burlington Northern Santa Fe Railroad Third Track project. These efforts are a matter of public record and demonstrate the Tribe's ongoing commitment to preserving the cultural integrity of its ancestral territory.

T4-3

The Native American Heritage Commission (NAHC), a state agency of California, is empowered by state law to designate a Most Likely Descendent (MLD) on the inadvertent discovery of unidentified Native American human remains on state or private land. (Cal. Pub. Res. Code § 5097.98) Over the past 10 years, the NAHC has designated the Tribe as the MLD on discovery of remains within the traditional lands of the greater Serrano Indian Nation, including four discoveries made on private lands within the Tribe's historic lands near Barstow along the Mojave River bed. The remains were repatriated to the Tribe for their proper disposition.

The NAHC also maintains a sacred lands file which is a partial list of sites that are deemed sacred by Native American tribes. According to the NAHC, a sacred site is defined as:

[A] geophysical location, geographical area or feature identified as sacred by a California Native American tribe by virtue of its historical, cultural, spiritual, religious, or ceremonial use by that tribe. Sacred sites are considered sacrosanct to a tribe and are integral to a tribe's continued existence as a people. Evidence to demonstrate a site's nature may consist of site recordings, such as listing on the Native American Heritage Commission's Sacred Lands File or the California Historic Records Inventory System, ethnohistoric literature, oral histories, cultural resource reports, museum inventories, archaeological research or anthropological investigations.

historic lands of the greater Serrano Indian Nation that are identified as sacred to the Tribe, including sites within the Barstow area. These sites are listed in the NAHC sacred lands file.

Repatriation of human remains to the Tribe under the rules of the relevant state and federal government authorities further demonstrates direct aboriginal connections between the Tribe and areas that include the proposed casino Project site. Conversely, the Los Coyotes Band of Cahuilla and Cupeño Indians demonstrate no such ties to the Project site, and the DEIS and TEIR fail to sufficiently address the Tribe's cultural and historical ties to the area.

T4-3
Cont.

The Draft Environmental Impact Statement and the Tribal Environmental Impact Report Neither Accurately Nor Adequately Discuss the Proposed Project Cultural Setting, and Do Not Adequately Address Potential Impacts on Environmental and Cultural Resources as required by National Environmental Policy Act.

Without sufficient environmental documents, the BIA cannot satisfy its duty to comply with NEPA, which requires consideration of potential effects on the natural and physical environment and the relationship of people with the environment. (40 C.F.R. § 1500.1.) Congress enacted NEPA "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation." (42 U.S.C. § 4321.) To accomplish these purposes, NEPA requires all agencies of the federal government to prepare a detailed statement that discusses the environmental impacts of, and reasonable alternatives to, all "major Federal actions significantly affecting the quality of the human environment," in an Environmental Impact Statement (EIS). (42 U.S.C. § 4332(2).) The EIS must "provide full and fair discussion of significant environmental impacts and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." (40 C.F.R. § 1502.1.) This discussion must include an analysis of "direct effects," which are "caused by the action and occur at the same time and place, as well as "indirect effects which. . . are later in time or farther removed in distance, but are still reasonably foreseeable." (40 C.F.R. § 1508.8.) An EIS must also consider the cumulative impacts of the proposed federal agency action together with past, present and reasonably foreseeable future actions, including all federal and non-federal activities. (40 C.F.R. § 1508.7.) Furthermore, an EIS must "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed project. (40 C.F.R. § 1502.14(a).)

T4-4

NEPA's implementing regulations firmly establish that "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." Essential information includes "[a]ccurate scientific analysis, expert agency comments, and public scrutiny." (40 C.F.R. § 1501.1.)

The DEIS falls short on all counts. It omits consideration of significant information bearing on the cultural environment of the Barstow area described in more recent works by ethnographers, which identify important information on the natural and cultural resources of the area, the early inhabitants of the area and the relationship of the people to the environment. The ethnographic information considered in the DEIS/TEIR is from 1925-1937—not only is it out of date, but it cannot reasonably be considered complete. More recent scholarship and ethnographic information discuss important cultural sites and cultural settings, and are readily available to

industry professionals—including those working for Los Coyotes—in published and unpublished articles and reports.

The ethnographic information describing the *Vanyume* of the Barstow area as a distinct politically autonomous group relies on early less informed ethnographers (from 1925 and 1937), that have been challenged by more recent and extensive scholarship by David Earle, Michael Lerch and Chester King, all of whom have indicated that the *Vanyume* were desert clans of the Serrano rather than a separate people. Recent scholarship by Chester King based on mission records shows strong political, marriage and kinship ties between the Serrano valley/mountain clans and the *Serrano-Vanyume* desert clans in the Barstow area (King 2007). Archaeological data, historical texts, and ethnographic research all have contributed to our knowledge of where the major *Serrano-Vanyume* habitation sites were located along the Mojave River.

We know the *Serrano-Vanyume* lived in mountainous areas during the summer and traveled to lower elevations, including the desert, when the snows arrived; although they had semi-permanent villages, they traveled to obtain food and other resources on a seasonal basis, making temporary camps at springs, in rock shelters, along seasonal drainages, and wherever plant and animal resources occurred. Numerous trails and trail segments across the desert landscape are faint traces of their travels. *Serrano-Vanyume* settlements of various time periods, from about 5000 years ago to the mid-19th century, have been identified along the Mojave River in the Summit Valley, at Hesperia, Apple Valley, Victorville, Barstow, in Afton Canyon, and the Cronise Lakes basin. Archaeological sites attest to earlier and later seasonal presence of humans around lake playas such as Soda, Silver, Troy, Harper and Coyote playas, as well as at springs, rock-art sites, and sources of tool stone, ornamental stone and shell ornaments. The Serrano people have called this area home for millennia.

T4-4
Cont.

The DEIS presents no discussion or consideration of the publications or site records of Gerald Smith, the foremost investigator for the Mojave River drainage from the 1940s to 1950s, whose work is readily available in a published volume at the San Bernardino County Museum. Again, this critical information not only identifies the Serrano people as the area's historical and cultural inhabitants, it also demonstrates the measure of analysis the DEIS has failed to consider regarding the presence of and potential impacts to cultural resources.

The DEIS presents an inadequate and incomplete discussion of the cultural setting in prehistory and the natural environment. For example, it indicates evidence of the Gypsum period is not very visible in the area. Newberry Cave a very significant Gypsum site that is not discussed or considered. (*See* Davis and Smith 1995). Sites in Summit Valley and Cronese Lakes investigated by four industry professionals are conspicuously absent from the DEIS. (*See* Sutton, Schneider, DeBarros and York (Drover 1979; Rector et al. 1983; Sutton et al 1993 Sutton and Schneider 1996; DeBarros 2004; Schneider 1989.) The DEIS also omitted pertinent research on the Harvard Hill and Mojave River area Newberry Cave. (*See* McKenna et al. 2005.) These and other current materials address the Gypsum period in the region and present ethnographic overview information and archaeological information on the cultural resources of the Mojave River region. The Tribe maintains that the BIA cannot comply with NEPA by relying on a deficient environmental document.

The DEIS also failed to discuss or consider an important metate quarry located at Elephant Mountain in Barstow, which was the source of milling tools for many of the Serrano

sites in the area and the Great Basin. The quarry has been described in the Journal of California and Great Basin and in works by Schneider, Lerch and Smith (*See Schneider et al. 1995*). This area is no secret; there are petroglyphs located in the area and the site is described in early historical documents.

The Sidewinder Archeological Quarry District is omitted from any discussion in the body of the report although it is referenced as eligible for listing in the National Register and listed as in the vicinity of the project in Appendix "N" per information from the San Bernardino County, Archaeological Information Center (AIC). The quarry district is near the Project and was an area of intensive prehistoric lithic-resource procurement activities and an important stone tool source of high quality chalcedony and consists of 43 individual sites. (*See Lerch et al 2009.*)

T4-4
Cont.

The Tribe believes the absence of critical, compelling information demonstrates that the DEIS has not assembled enough accurate, detailed, and up-to-date information to allow a determination of effects on the cultural environment and must be rejected for failure to address these deficiencies.

The Cumulative Impacts Analysis Contains Insufficient Information Regarding Effects on Sensitive Wildlife.

A discussion of the cumulative environmental effects of a proposed action is an essential part of the environmental review process; otherwise the agency cannot evaluate the combined environmental effect of related action. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Under NEPA, an EIS must provide a sufficiently detailed catalogue of past, present, and reasonably foreseeable future projects, and provide an adequate analysis of how these projects, in conjunction with the proposed action are thought to have impacted or are expected to impact the environment. See Muckleshoot Indian Tribe v. United States Forest Service 177 F.3d 800, 810 (9th Cir. 1999) (per curiam) (quoting 40 C.F.R § 1508.7). In addition to an adequate cataloging of past projects, NEPA also requires a discussion of consequences of those projects. The DEIS has failed to properly address NEPA's mandate.

The DEIS lists special status threatened species as desert tortoise, Barstow woolly sunflower, burrowing owl, creamy blazing star, Le Conte's thrasher, Mojave ground squirrel, Mojave tui chub, Mojave monkeyflower and prairie falcon (DEIS 3.4-9, 3.4-10). Of particular concern are any cumulative impacts from the instant project on the desert tortoise, which is considered a cultural resource by many Native people, including the Tribe. In this regard, the concern goes to the cumulative effects of this project when considered in conjunction with several large renewable energy projects within the geographic scope of the Barstow area which contains that of desert tortoise habitat.

T4-5

The Abengoa/Mojave project is a large scale solar project under construction northwest of Barstow. The Calico Solar project east of Barstow is another large scale solar project that will begin construction at end of 2011. Both projects have significant impacts on the desert tortoise and its habitat. The DEIS fails to provide an adequate analysis of how these related projects, in conjunction with the proposed action, are expected to impact the tortoise and other species as well as the environment and how this will be mitigated to an acceptable level. These projects and their potential cumulative effects of these projects are mentioned nowhere. Considered in the

context of these already permitted large energy projects in the region, as well as the impacts to nearby Interstate 15, the cumulative impacts of the current Project can be significant.

T4-5
Cont.

The DEIS has not assembled enough information and performed the requisite analysis to determine the level of cumulative impacts to habitats, species and ecosystems. As a thorough cumulative impact analysis is required for the public and the agencies to make an informed decision regarding the consequences of a proposed action, the DEIS is deficient and must be revised to thoroughly examine these deficiencies.

Conclusion

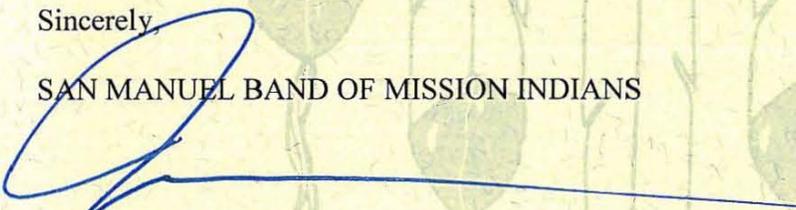
The protection of aboriginal lands by Indian tribes across the country is fundamentally important to the future of Indian Country, not only to preserve cultural ties to those lands, but also to preserve the cultural resources located within those lands. The Tribe will continue to vigorously oppose the creation of brand new reservations on our aboriginal lands by a Native American tribe that cannot demonstrate its connections through contemporary, historical or cultural records. As the trustee for all Native American tribes and Native people, the Department of Interior must exercise its authorities to preserve the cultural and historical integrity of tribal nations and reject off-reservation proposals—whether for gaming or not—that encroach on the aboriginal lands of other tribes.

T4-6

For the foregoing reasons, the Tribe urges you to reject the fee to trust application for the Los Coyotes Band of Cahuilla and Cupeño Indians, and to find that the Project DEIS and TEIR fail to provide sufficient information to enable the BIA to comply with the National Environmental Policy Act. Thank you for the opportunity to submit these comments on behalf of the San Manuel Band of Mission Indians. Please contact me if you have questions.

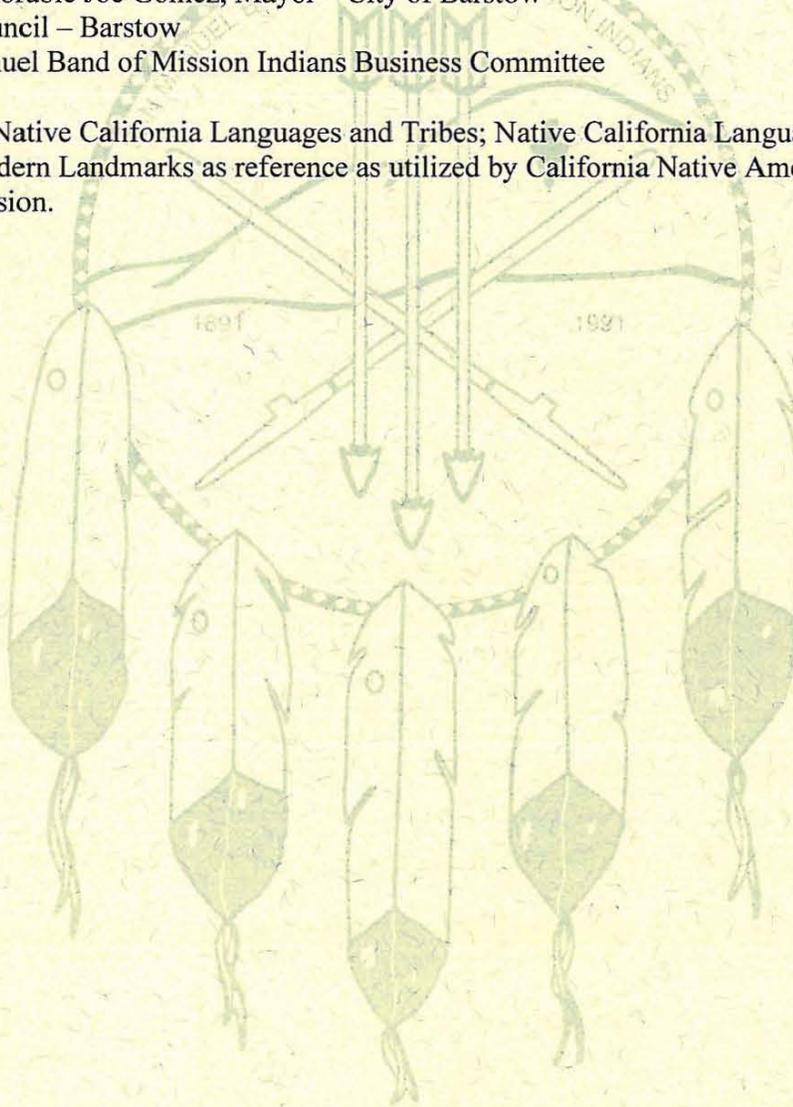
Sincerely,

SAN MANUEL BAND OF MISSION INDIANS



James C. Ramos, MBA
Chairman

- cc: John Rydzik, Bureau of Indian Affairs, Pacific Regional Office - Sacramento, CA
The Honorable Jerry Brown, Governor of California
The Honorable Dianne Feinstein, Senator for California
The Honorable Barbara Boxer, Senator for California
The Honorable Jerry Lewis, Congressman for California
The Honorable Joe Gomez, Mayor – City of Barstow
City Council – Barstow
San Manuel Band of Mission Indians Business Committee
- /att. Maps – Native California Languages and Tribes; Native California Languages and Tribes with Modern Landmarks as reference as utilized by California Native American Heritage Commission.



References cited:

Davis, C. Alan, and Gerald A. Smith

1981 *Newberry Cave*. Redlands, CA: San Bernardino County Museum Association.

deBarros, Philip

2004 Cultural Resources Overview and Management Plan, Rancho Las Flores Project, Hesperia, San Bernardino County, California. Report on file at the San Bernardino County Archaeological Information Center, Redlands

Drover, Christopher E.

1979 *Late Prehistoric Human Ecology of the Northern Mohave Sink, San Bernardino County, CA*. Unpublished PhD dissertation, University of California, Riverside.

Earle, David D.

2004 Native Population and Settlement in the Western Mojave Desert in the Eighteenth and Nineteenth Centuries. Proceedings of the Millennium Conference: *The Human Journey and Ancient Life in California's Deserts, Barstow California, May 9-12, 2001*. Ridgecrest, CA: Maturango Museum Press.

2005 The Mojave River and the Central Mojave Desert: Native Settlement, Travel, and Exchange in the Eighteenth and Nineteenth Centuries. *Journal of California and Great Basin Anthropology* 25(1):1-38.

King, Chester

2007 *Serrano Ancestral Lands: Serrano Clans Recruited at San Gabriel and San Fernando Missions*.

King, Chester, and Thomas C. Blackburn

1978 *Tataviam*. In: *Handbook of North American Indians*, Vol. 8, California, edited by R. F. Heizer, pp. 535-537. Washington, DC: Smithsonian Institution

Lerch, Michael, Robert M. Yohe, and Mark Q. Sutton

2009 *Quarries along the Sidewinder Trail II: Further Investigations in the Sidewinder Quarry Archeological District, Barstow, San Bernardino County California*. Prepared for BLM; Technical Report 09-08 Statistical Research, Inc. Redlands, CA

McKenna, Jeanette

2005 Results of a Class II Archaeological Testing Program At CA-SBR-11787, A Large Prehistoric Site located in Between Harvard Hill and the Mojave River Whittier, CA

Rector, Carol H, James D. Swenson, and Philip J. Wilke

1983 *Archaeological Studies at Oro Grande, Mojave Desert, California*. Redlands, CA: San Bernardino County Museum Association.

Schneider, Joan S.

1989 Archaeology of the Afton Canyon Site. *San Bernardino County Museum Association Quarterly* 36(1).

Schneider, Joan S., Michael A. Lerch, and Gerald A. Smith

1995 A Milling-Implement Quarry at Elephant Mountain, California. *Journal of California and Great Basin Anthropology* 17(2):191-221.

Smith, Gerald A.

1963 *Archaeological Survey of the Mojave River Area and Adjacent Regions*. Redlands, CA: San Bernardino County Museum Association.

Sutton, M. Q., and J. S. Schneider

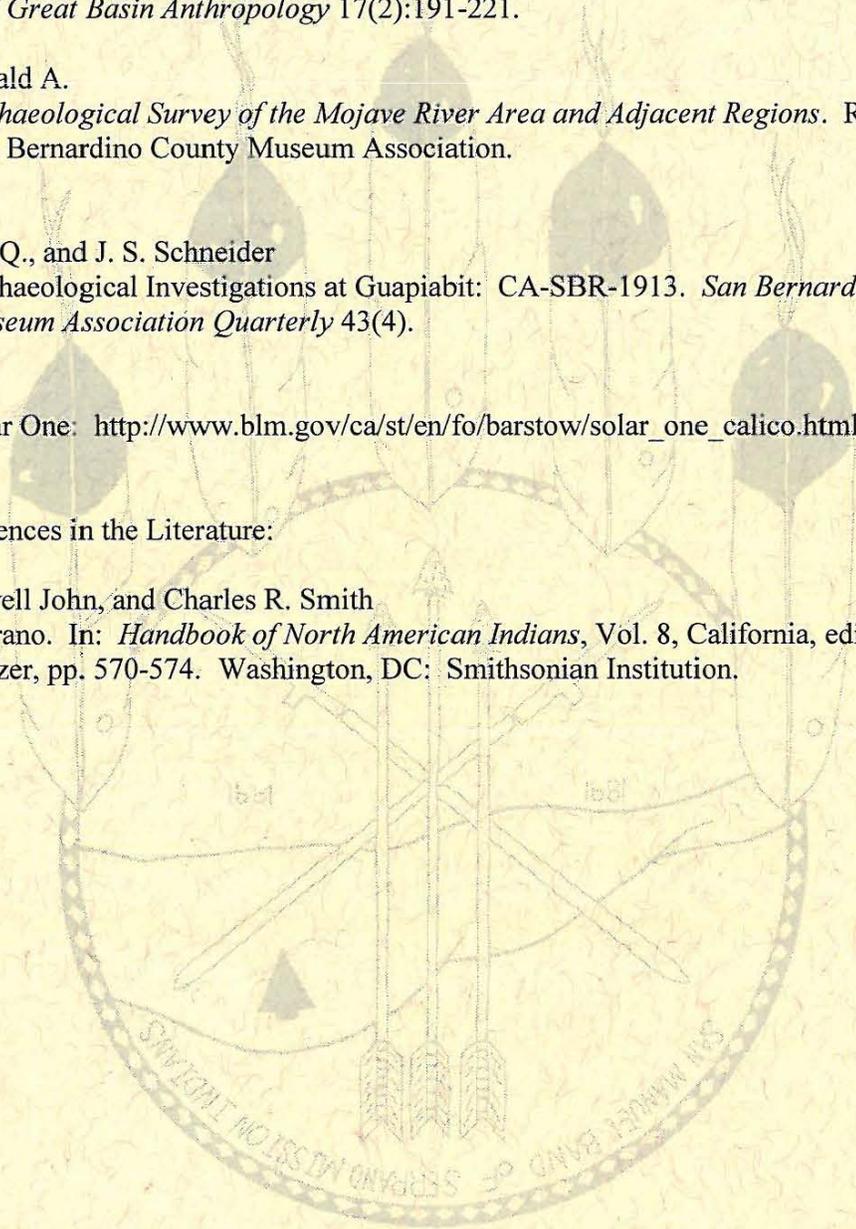
1996 Archaeological Investigations at Guapiabit: CA-SBR-1913. *San Bernardino County Museum Association Quarterly* 43(4).

Calico Solar One: http://www.blm.gov/ca/st/en/fo/barstow/solar_one_calico.html

Other references in the Literature:

Bean, Lowell John, and Charles R. Smith

1978 Serrano. In: *Handbook of North American Indians*, Vol. 8, California, edited by R. F. Heizer, pp. 570-574. Washington, DC: Smithsonian Institution.



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**DEIS Comments, Los Coyotes Band of Cahuilla and Cupeño Indians
 Fee-to-Trust and Casino-Hotel Project**

Picayune Rancheria of the Chukchansi Indians
 ("Picayune Rancheria")
 Attn: Reginald Lewis, Chairman
 46575 Road 417, Bldg. #C
 Coarsegold, CA 93614



Picayune Rancheria
of the

Comment Letter T5

CHUKCHANSI INDIANS

48575 Road 417 • Coarsegold, CA 93614 • (559) 683-6633 • FAX (559) 683-0599

September 14, 2011

VIA HAND-DELIVERY AND FIRST CLASS MAIL

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

Re: *DEIS Comments, Los Coyotes Band of Cahuilla and Cupeño Indians ("Los Coyotes") Fee-to-Trust and Casino Hotel Project*

Dear Ms. Dutschke:

This letter and the enclosed attachment provides the written comments of the Picayune Rancheria of Chukchansi Indians ("Picayune Rancheria") concerning the scope and implementation of the Draft Environmental Impact Statement for the Los Coyotes Band of Cahuilla and Cupeño Indians ("DEIS" or "Project") described in the Federal Register on July 1, 2011, Volume 76, No. 127, pg. 38677-38678, attached hereto as Exhibit 1.

T5-1

I. LOS COYOTES JURISDICTIONAL CLAIM OVER THE FEE LAND ("SITE") CIRCUMVENTS THE INTENT OF THE INDIAN GAMING REGULATORY ACT.

The Picayune Rancheria has several concerns with regard to the DEIS and the Project but a principal concern is Los Coyotes' desire to alter and indeed manipulate its known historical jurisdictional limits by extending its jurisdiction to the proposed Site. Los Coyotes' expansion of governmental jurisdiction to this fee land to use said land for gaming purposes is inconsistent with the spirit of the Indian Gaming Regulatory Act ("IGRA") and, if allowed to proceed, establishes dangerous precedence for Indian gaming in California.

T5-2

Los Coyotes' existing reservation is approximately 160 miles southeast of the Site and they have failed to establish with credible evidence that they historically asserted jurisdiction over this land. Permitting Los Coyotes to utilize the Site for gaming purposes that was not under Los Coyotes' governmental power or jurisdiction circumvents the intent and spirit of IGRA. A decision allowing Los Coyotes to conduct gaming on the Site will have wide-ranging impact throughout California, as other tribes will undoubtedly use the Los Coyotes Project as a

precedent for their efforts to establish gaming on lands over which they have not exercised historical jurisdiction.

Off site gaming is often examined to determine what is good for the local community and local and State government coffers, not necessarily what is good for Indians – both the “reservation shopping” tribe and the surrounding tribal community, particularly those tribes that followed the spirit of IGRA in establishing gaming facilities in their aboriginal tribal lands. IGRA looks to provide for the self-determination and economic development of tribes, including job creation. However, Los Coyotes’ off site gaming Project will create jobs for local residents, not the tribe. For those tribal members who move from their aboriginal lands to pursue employment opportunities with the Project, they risk losing their tribal identity, spirituality, language, tradition and culture. These results cannot reasonably be considered in the best interest of the tribe, and are a byproduct of “reservation shopping” that must be considered in any Secretarial Decision on a two part determination.

T5-2
Cont.

Affirming the ability of Los Coyotes to alter their established historical jurisdiction solely for the purpose of positioning itself closer to more lucrative gaming markets is not only inconsistent with the spirit and intent of IGRA but is also bad policy, jeopardizing the continued success of Indian gaming in California, weakening the integrity of tribal sovereignty, and contravening the Congressional mandate of the Bureau to improve and to strengthen tribal communities and governments through long term sustainable programs that work to improve the quality of life for all Native Americans. The impact of allowing Los Coyotes to proceed with gaming on a site far removed from its historical governmental jurisdiction, opens a Pandora’s box of problems for Indian tribes and the prospect of tribes leap-frogging over historical tribal boundaries to locate closer to more favorable gaming environments to the detriment of existing tribal economic development.

II. THE PUBLIC HEARING ON THE PROJECT FAILED TO PROVIDE THE PUBLIC A MEANINGFUL OPPORTUNITY TO BE HEARD.

40 C.F.R. § 1506.6, a regulation enacted by the Council for Environmental Quality (“CEQ”) setting out the National Environmental Policy Act’s (“NEPA”) requirements, provides in relevant part:

Agencies shall:

- (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures;
- (b) Provide public notice of NEPA related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected...
- (c) Hold or sponsor public hearings or public meetings whenever appropriate...

Criteria shall include whether there is:

T5-3

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing...

In addition, 40 C.F.R. §1503.1 requires: "After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall... request the comments of... Indian tribes, when the effects may be on a reservation." These regulations require the participation of the Picayune Rancheria and their importance has repeatedly been emphasized by the courts. In *Churchill County v. Norton* (9th Cir. 2001) 276 F. 3d 1060, 1072 the Ninth Circuit stated: "[We will] strictly interpret the procedural requirements in NEPA (National Environmental Policy Act) and CEQ (Council on Environmental Quality) regulations to the fullest extent possible consistent with the policies embodied in NEPA... Grudging, pro forma compliance will not do." (internal citations omitted). The lead agency must take a hard look at the consequences of the proposed action, including environmental consequences and the impact on Indian tribes, and "objectively and in good faith - not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made." *Montana Wilderness Ass'n v. Fry* (D. Mont. 2004) 310 F. Supp. 2d 1127, 1143 (quoting *Medcalf v. Daley* (9th Cir. 2000) 214 F. 3d 1135, 1142). The twin keys to compliance are "informed decision-making and informed public participation." *California v. Block* (9th Cir. 1982) 690 F. 2d 753, 767.

An agency that inadequately considers public comments has violated NEPA. As an example, the 2001 case of *Idaho v. U.S. Forest Service* (D. Idaho) 142 F. Supp. 2d 1248, concerned a new Forest Service program for road-less areas. The court held that the Forest Service had not given the public an opportunity to comment meaningfully on its DEIS and Proposed Rule, thereby violating NEPA. *Id.* at pg. 1261-62. The Forest Service had allowed time and comment but the court noted that by all appearances, the Forest Service was using the process "to rationalize or justify decisions already made." *Id.* at pg. 1261.

The Bureau of Indian Affairs' ("BIA") procedures for public participation in the instant matter have been similarly inadequate and failed to provide the public and Indian tribes a meaningful opportunity at a convenient time and location to present comment. Creating a forum to garner the support of the local community on a gaming project does not meaningfully comply with the legal requirements of NEPA or address the issues presented in the DEIS. The BIA has not done everything possible and required by regulation to insure that the public's concerns are given due consideration, but rather have done the bare minimum given the degree of public concern over the Project and the size and complexity of the DEIS. The perceived preferential treatment to the Project's proponents and the BIA's incapacity or unwillingness to address the concerns of the public and Indian tribes who care and who have invested countless hours and significant resources into their economic initiatives, suggests the BIA's process has been merely a "grudging, pro forma" exercise that will be used to justify decisions already made.

T5-3
Cont.

III. THE POTENTIAL IMPACTS OF THE PROJECT CANNOT ADEQUATELY BE ASSESSED DUE TO THE INADEQUATE PROJECT DESCRIPTION.

The DEIS is required to assess all potential impacts of the proposed action on the quality of the human environment and to disclose that information to the public. The proposed action includes the trust acquisition of approximately 23 acres of land currently held in fee by Los Coyotes for gaming purposes and the approval by the National Indian Gaming Commission ("NIGC") of a management contract. The foreseeable consequences of the proposed action will be the development of a casino and hotel complex with associated support facilities on the parcel of land to be put into trust.

The data and information that Los Coyotes has submitted and presented concerning the project is incomplete and as such the potential impacts on land resources, water resources, including surface water, drainage, flooding, ground water and water quality, air quality, biological resources, including vegetation and wild life, cultural and paleontological resources, socioeconomic conditions and environmental justice, traffic, land use, agriculture, water supply, waste water and solid waste, electrical, natural gas, telecommunications, public health and safety, schools, noise, and visual resources have not been adequately or properly analyzed and, indeed, have been understated. It is clear that the assessment of the potential impacts of the proposed Project on the quality of the human environment is inadequate and incomplete. The BIA must at a minimum revise and recirculate the DEIS.

Additionally, the Project could create significant growth inducing impacts that have not been properly examined in the DEIS. A facility such as the one contemplated by the Project will require employees including temporary construction employees that will contribute to an increase in traffic, services, housing needs and criminal activities. These factors were not adequately addressed in the DEIS and will significantly increase the likelihood that endangered or threatened species will not be adequately protected by the proposed mitigation measures. As such, a Secretarial Determination that the Project is in the best interest of the tribe and is not detrimental to the surrounding community cannot be adequately supported by the current, unrevised DEIS.

IV. LOS COYOTES' ANCESTRAL LANDS DO NOT EXTEND TO THE SITE.

The Indian Reorganization Act (the "IRA"), IGRA, as well as Proposition 1A mandate that a gaming establishment be within the historical homelands of the Los Coyotes. The IRA authorizes the Secretary of the Interior (the "Secretary") "in his discretion" to acquire land for Indians (25 U.S.C. § 465). The IRA was adopted in part to repudiate the allotment policy of the late nineteenth century which resulted in the large-scale transfer of land out of Indian ownership. While the IRA authorizes the Secretary to acquire land for Indians, it did not authorize the Secretary to acquire land outside of a Tribe's historic homeland in order to operate an off-reservation casino.

T5-4

T5-5

The legislative history of the IRA clearly demonstrates that Congress granted the Secretary the discretion to restore tribal lands that were lost through the allotment period when a tribe's existing land base was inadequate to support a tribal community in which tribal members could live and work. The acquisition of land outside of the tribe's historic homelands solely to allow for a tribe to own a casino is inconsistent with the Congressional intent behind the IRA.

The legislative history of the IRA demonstrates that 25 U.S.C. § 465 authorizes the Secretary to acquire lands to address the loss of tribal lands, resulting in poverty, and the disintegration of tribal communities. Congress intended the Secretary to acquire lands located within areas occupied by the tribe, i.e., near or contiguous to the tribal reservation. Land acquisition outside the tribe's historic homeland was neither contemplated nor authorized.

The policy of the IRA, which was the opposite of that of allotment, is to provide a tribal land base on which tribal communities, governed by tribal governments, could exist and flourish. Consistent with the policy, the Secretary has typically exercised discretion regarding trust land acquisition authority to take lands into trust that are within, or close proximity to existing reservations.

Additionally, on March 7, 2000, the voters in the State of California authorized federally recognized Indian tribes to operate slot machines, lottery games, and banking and percentage games on their reservation. The purpose of Proposition 1A was to provide education, housing, healthcare and jobs on tribal reservations. Nowhere was it authorized or contemplated that "reservation shopping" would be allowed to build casinos that would be established outside the historic homelands of an Indian tribe. In fact, the voters in California were told that Proposition 1A and federal law strictly limit Indian gaming to tribal land. That casinos could be built anywhere was not what the voters thought they approved with passage of Proposition 1A.

The Los Coyotes Site does not conform to the Legislative intent of the IRA, which does not support "reservation shopping" to enhance economic opportunities for tribes looking to expand their jurisdiction beyond their historic lands. A Secretarial Decision pursuant to IGRA that the land is eligible for gaming, is in the best interest of the tribe, and is not detrimental to the surrounding community would require the Secretary to go against the intent of the IRA and California voters based on a DEIS that does not adequately address Los Coyotes' interests or environmental impacts or the interests of the surrounding community.

V. CONCLUSION.

Finally, IGRA does not expand the authority of the Secretary to authorize off-reservation casinos beyond what the IRA authorized in 1934. IGRA mandates, when acquiring land into trust for gaming purposes, that the Secretary must determine that the gaming establishment on newly acquired lands would not be detrimental to the surrounding community, or nearby Indian tribes. This mandate of IGRA and the trust responsibility owed to the tribes requires the BIA reject Los Coyotes' fee to trust application and its accompanying request for a positive

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Secretarial Decision. To take distant land into trust and to receive a positive Secretarial Decision due to the land's proximity to more a profitable gaming location than the tribe's historical homeland and current reservation, is contrary to longstanding federal Indian policy, erodes tribal sovereignty, establishes bad policy creating a precedent that other tribes will use to gain access to more profitable gaming markets by "reservation shopping," cause significant harm to other tribes and only benefit non-Indian developers.

Approval of this fee to trust application and a positive Secretarial Decision would open the floodgates to every other Indian tribe seeking land acquisition for fee to trust designation to position themselves closer to urban population centers with better access to the gaming public but would be contrary to the spirit and intent of the law and current policy. Accordingly, the DEIS must be revised and reissued pursuant to the provisions of NEPA, the regulations and established law.

If you have questions or wish to discuss this further, please contact me or our General Counsel, Rosette, LLP, attorney Richard G. Verr, Esq. at 480-889-8990. Thank you for your time and attention to this matter.

Sincerely yours,

PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS



Reginald Lewis, Chairman



Jennifer Stanley, Secretary

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