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10/19/05

Brad Mehaffy
NEPA Compliance Officer
National Indian Gaming Commission
1441 L Street, NQ, Suite 9100
Washington, D.C.

RE: A casino proposed by the Federated Indians of Graton Rancheria and Stations Casinos of Nevada near Rohnert Park, California

The O.W.L. Foundation ("O.W.L.") submits this letter providing written comments pursuant to the National Environmental Policy Act (NEPA) and specifically with regards to a proposed casino complex undertaken jointly by the Federated Indians of Graton Rancheria and Station Casinos ("the applicant"). We feel that the number and length of the scoping hearings for this project are wholly inadequate for an endeavor of such magnitude and especially for such a substantial development destined for a site already suffering profound environmental vitiation. We therefore request additional NEPA scoping secessions to allow more of the public to submit comments and observations.

O.W.L.'s mission is to secure the adoption of a program that ensures sustainable management of our water resources in Sonoma County. O.W.L.'s membership is comprised of residents throughout Sonoma County, including residents of Penngrove, who understand that immediate steps must be taken to avoid a disastrous outcome for the County's groundwater supply.

The County's once reliable groundwater supply has been overproduced. O.W.L. has consistently presented undisputable facts about existing and worsening conditions of overdraft in the Santa Rosa Plain Groundwater Basin. In light of the Basin's overdrafted condition, O.W.L. has filed a lawsuit against the City of Rohnert Park alleging the City failed to comply with California Water Supply laws that impose strict requirements on certain development projects. A copy of O.W.L.'s Complaint is attached.

The proposed casino and hotel/retail complex will have a devastating affect on the County's water supply. Under federal case law (the "Winters Doctrine"), when an Indian reservation is established, "federally reserved water rights" attach to the reservation land. These federally reserved water rights take priority over pre-existing, state-based rights, and are protected against loss, interference, or injury. Thus, serious implications could arise from the establishment of federally reserved water rights in the Sonoma County groundwater basin system. These federally reserved rights would further

jeopardize the ability of existing landowners and water purveyors to exercise their water rights. In addition, an Indian Nation would not likely be required to comply with the California Environmental Quality Act, SB 221 and SB 610, a locally enacted groundwater ordinance, or a groundwater management plan due to its status as a sovereign nation. A copy of a recently drafted report entitled "Legal Analysis of Sonoma County's Groundwater Supply and the Adverse Affect of Federally Reserved Water Rights" is attached which will further elaborate on this issue.

The O.W.L. Foundation's primary concern is the location of this proposed project within a basin suffering groundwater overdraft. We are submitting under separate cover copious documentation of not just the overdraft situation surrounding Rohnert Park, and therefore the proposed site.

This more comprehensive picture will help the NEPA process expand to an Area-Wide Plan that includes the Santa Rosa Plain Groundwater Basin. O.W.L. regards an Area-Wide Plan that includes the groundwater basin as necessary, reasonable and appropriate. An Area-Wide Plan can plan ahead 20 years, a timeline that would agree S.B. 610's 20-year timeline.

The O.W.L. Foundation feels that an Area-Wide Plan is justified given the severity of Sonoma County's water crisis. It is in the applicant's best interest to fully comprehend the water crisis before committing to construction or groundwater pumping.

The applicant would also benefit from understanding the dwindling water supply available to the Sonoma County Water Agency, and hence the region, due to Friends of the Eel River v. Sonoma County Water Agency*;* Cal.App.4th; Case No. AO98118 (appeal filed Sept. 17, 2002 1st Dist.) and the consequences this decision exerts on the Russian River, the Laguna de Santa Rosa, and all contractors of SCWA. All stakeholders in the Santa Rosa groundwater basin share the same finite source of water and it is reasonable for the applicant to plan ahead if the project expects to consume a portion of this limited resource.

As the Casino proposal is dependent on the project site being designated as federal reservation land, O.W.L. advocates for strict environmental review under the National Environmental Policy Act, which applies to federal discretionary decisions that may "significantly affect the human environment".

1. Will the placement of the applicant's federal right in any way expropriate, annex or take water rights away from existing stakeholders? Does it have the potential to do so? If it does, please explain how such reapportionment might happen and why. Under an Adjudicated groundwater basin, will the applicant's water right, in any way, enjoy primacy, preeminence, or superiority over the water rights of neighbors who do not have federal water right protection? If so, please explain how such primacy is determined and what proportion of water resources would be assigned to the applicant by a court-appointed "watermaster" in the event that the groundwater basin is adjudicated.

2. Does the applicant intend to sell water within its property borders? If so, what is the source of this water?

3. Does the applicant intend to bottle groundwater intended for sale?

4. Does the applicant intend to plant vineyards or undertake any agricultural production, including plants considered to be ornamental garden products? If so, how many acre-feet of water will these plants consume in a year? Please describe the irrigation system planned for such use, if any.

5. How many groundwater wells does the applicant intend to drill? Please describe the pumping capacity for each well.

6. To what depth are these proposed wells to be drilled? Please describe the specifications of the casings for these wells.

7. At what depth are these wells to be screened?

8. Where, precisely, within the existing cone of depression will these wells be located?

9. Will the applicant be purchasing water from outside the proposed boundaries of the project? If so, how much water will be purchased per year? From where does the applicant plan to purchase water? Does the applicant have plans to install pipe that cross the project's property lines? If so, where will this pipeline go and to what use will it be put? Will the applicant import water via tanker trucks? Will the applicant import water in the event of unproductive wells? If so, and depending on the duration of

inadequate yield, where will this tanker water come from, and how much imported water will be imported?

10. Has the applicant performed a three-dimensional groundwater model of the Santa Rosa Plain Groundwater Basin or subbasin using MODFLOW or an equivalent groundwater model? If not, please explain why such a study is missing or not needed. If so, how may O.W.L. obtain these data?

11. How much water does the applicant expect to draw indirectly from the Laguna de Santa Rosa due to underground flows caused by the natural drafting of the applicant's proposed groundwater wells? Will this draw affect the three existing "emergency" wells operated by the Sonoma County Water Agency ("SCWA") located at Todd Road, Occidental Road, and Sebastopol Road? How much water must the three "emergency" wells draw before they have an effect on the applicant's wells?

12. Has the applicant made any plans to contract water from the SCWA? Have any representatives from the applicant spoken with or met with representatives of the SCWA? If there have been no discussions between the applicant and the SCWA, please explain why there have been no discussions and if the applicant plans to rely solely on groundwater extraction.

13. What is the applicant's definition of "groundwater overdraft"? If that definition is different than the definition of groundwater overdraft used in the Bulletin 118 Update by the California Department of Water Resources ("DWR"), prepared as of

2003, then are those two definitions consistent? If yes, please explain. If not, please explain why they are not.

14. The California Supreme Court in Pasadena v. City of Alhambra (1949) 33 Cal.2d 908, defined groundwater overdraft in terms of the taking of groundwater in excess of "safe yield." What is the safe yield of the Basin? Does the applicant contend that the definition of groundwater overdraft used in the Water Supply Assessment ("WSA") prepared by the City of Rohnert Park is consistent with the California Supreme Court's treatment of overdraft as production of groundwater in excess of safe yield? Please explain how the definitions are consistent or inconsistent.

15. Please describe all actions and/or programs that the applicant plans to undertake that are designed to contribute to the elimination of the overdraft condition of the basin.

16. DWR Bulletin 118 states that the average annual natural recharge for the Basin for the period 1960 to 1975 was estimated to be about 29,300 acre feet ("af"). Has the applicant determined the annual natural recharge rate for the Basin as of today or more recent years? If so, is that recharge rate greater or less than the recharge rate reported by DWR in Bulletin 118? Please explain any differences between those recharge rates.

17. In a recently prepared document entitled "Santa Rosa Plain Groundwater Study: Cost Allocation Including Contribution for Unincorporated County

Areas Population and Estimated Usage," the Sonoma County Water Agency ("SCWA") estimated that the annual groundwater production from the Basin was 34,333 af. Is that correct? Does the applicant have any information to show that the groundwater production from the Basin as of the current date is less than that amount?

18. Will any portion of the Project area cover any portion of the area designated in DWR Bulletin 118-4 as an area of natural recharge? If yes, what affect will the project have on the annual natural recharge rate for the Basin?

19. DWR Bulletin 118 reported that the average annual groundwater pumping from the Basin during the period from 1960 to 1975 was estimated to be approximately 29,700 af. Has the applicant determined the average rate of annual groundwater pumping from the Basin as of today or more recent years? If so, is that pumping rate greater or less than the pumping rate reported by DWR? Please explain any differences between those two production rates.

20. Various technical reports, including the Rohnert Park WSA and the Environmental Impact Report prepared for the Canon Manor West Project (the "CMW EIR"), indicates that groundwater levels in the Basin have declined since the early 1960s. Has the applicant been informed, through whatever means, that certain landowners with groundwater wells in the Basin have been unable to produce groundwater from those wells over the past five years, and have had to either abandon the well or drill it to deeper

depths? If so, has the applicant taken any steps to investigate the cause(s) of those landowners' loss of their wells? If so, what conclusions has the applicant reached?

21. Please identify the hydrogeologic boundaries of the Basin.

22. Is any portion of the Basin an unconfined aquifer? If so, please identify.

23. Is any portion of the Basin a confined aquifer? If so, please identify.

24. Please identify or describe the location of the Rodgers Creek fault zone relative to the proposed site. How does that fault affect the flow of water into the Basin? What are the estimated impairments to the applicant's groundwater wells, in acre-feet per year, of possible magnitudes 5.5; 6; and 7 earthquakes occurring within that fault zone?

25. Please describe the geology of the Sonoma Volcanics and Petaluma Formations. Are those geologic formations present east of the Rodgers Creek fault? What are the properties of storage and transmission of groundwater flow through those formations? What information shows that a large fraction of groundwater recharge into the Basin is obtained from groundwater flow outside the subbasin through the Petaluma Formation and Sonoma Volcanics, particularly from areas within or east of the Rodgers Creek Fault Zone? If such transmission exists, how would it affect the applicant's proposed wells?

26. Has the applicant or any employee of the applicant that has considered the hydrologic impacts of the proposed project reviewed the PES Environmental, Inc. groundwater model that appears in Rohnert Park's 2000 General Plan, or the input and output files used for that model? If not, why not? Isn't that information relevant to the analysis of water supply impacts? If so, who reviewed the data and how may O.W.L. obtain these data?

27. As of December 31, 2003, have groundwater levels at all depths in the Basin returned to the groundwater levels of 1982? If yes, please explain and provide a technical justification. If no, why didn't groundwater levels completely recover during the 1990s given the amount of rainfall during that decade? Did the amount of rainfall from 1990 to 2003 exceed the average amount of rainfall for Sonoma County determined in the WSA?

28. Has the lateral extent of the cone of depression in the Basin below the City of Rohnert Park ("the City"), and the proposed location of the project, increased or extended since 1985? Did the City install new groundwater production wells at the outer edges of its boundaries after 1985? If yes, please identify those wells, including their locations. Since the installation of those new production wells, has the City decreased the amount of pumping from the older groundwater wells at or near the center of the City's boundaries? Would the production of water from newer groundwater wells at the outer edges of the City boundaries and the production of less water from the groundwater wells at the center of the City change the shape of the cone of depression? How will the

applicant's groundwater wells interact and affect these existing wells? How will the applicant's wells modify the contour of the cone of depression?

29. The WSA assumes that the City's annual groundwater pumping will not exceed the limit of 2.3 million gallons per day ("mgd") or 2,577 af provided in the City's 2004 Water Policy Resolution ("2004 Resolution"). What guarantees has the applicant secured from the City to ensure that that limit will not be exceeded? Does the applicant plan to adopt a groundwater management plan in conjunction with the City and consistent with the State statute known as AB 3030 as a measure aimed at ensuring that the groundwater limits set forth in the 2004 Resolution will not be exceeded? If not, why not? If not, what steps has the applicant taken toward adopting such a plan in the future?

30. The maximum groundwater limits set forth in the 2004 Resolution is similar to the groundwater production limits identified in Section G of the Stipulated Judgment entered in the Court case entitled South County Resource Preservation Committee and John E. King v. City of Rohnert Park, Sonoma County Superior Court, (Case No. 224976). The provisions of Section C of that Stipulated Judgment obligate the City to undertake a groundwater monitoring program. Has the applicant approached the City to ensure that such a groundwater-monitoring program is currently vigilant? If so, where can O.W.L. obtain the results of that monitoring program? Has the applicant prepared current groundwater level contour maps for the Basin, including spring and fall seasons? Has the applicant obtained such maps from the City as they are required by Section C of the Stipulated Judgment and should be in the City's possession? If so,

where can O.W.L. obtain copies of such maps? Has the City submitted to DWR the type of data described in Section C of the Stipulated Judgment and has the applicant demanded and obtained copies for the proposed project? If so, where can O.W.L. obtain a copy of such information?

31. How is an aquifer defined?

32. What is the source of that definition of the term "aquifer"?

33. Has the applicant determined which of the City's wells experienced a decline in water levels in any zone during the period from 1987 to 2000?

34. Has the amount of annual natural recharge into the Basin decreased since the 1982 DWR Study due to development of various projects on land that had provided natural recharge into the Basin? If yes, what is the amount of that decrease in recharge?

35. DWR well 07N09W26P001M is located near SCWA's Occidental Road Well. The groundwater level decline beginning in 1999 in that well may be due to pumping by Sebastopol Road and Occidental Road wells. Has the applicant accounted for the water level declines in that well? If so, how may O.W.L. obtain these data? If not, please explain why this examination is missing or not needed.

36. DWR well 06N08W26M001M is west of Rohnert Park. Water level elevations in that well between –20.5 and –82.5 feet are far below historic water levels of

about +70 to +90 feet. Is that correct? What is the applicant's estimated projection of water levels in these wells before the project is built and what are the estimated levels after the project's wells are in full production?

37. DWR well 06NO8W22R001M is located west of Rohnert Park. Water levels in that well are between –23.3 and –59.0 feet elevation, which is far below historical elevations of about +70 to +90 feet. Is that correct? What is the applicant's estimated projection of water levels in these wells before the project is built and what are the estimated levels after the project's wells are in full production?

38. DWR well 06NO7W19E001M is located east of Rohnert Park and shows water levels between –13.4 ft and –55.6 feet in elevation, far below historic water levels of about +100 to +110 feet. Is that correct? What is the applicant's estimated projection of water levels in these wells before the project is built and what are the estimated levels after the project's wells are in full production?

39. The Penngrove Water Company well is located within the Basin immediately east of Rohnert Park. This well shows water level depths of 200 feet below the ground surface in 2004, far below historic water level depths of 5 to 20 feet. The PWC well has experienced a 180-foot drop since 1951. Is that correct? What is the applicant's estimated projection of water levels in this well before the project is built and what are the estimated levels after the project's wells are in full production?

40. It appears that certain water level contours relied upon in the WSA are improperly drawn. For example, upon closer inspection of Figures 15 and 16 in the WSA, the cones of depression should look deeper in several portions of the City since the contours do not honor low water levels. For Figure 15:

- Wells 5, 7 and 24 should be below a 20 ft level contour
- Well 15 should be at a 0 ft level contour
- Well 38 should be below a 60 ft contour
- Well 6 should be below a 40 ft contour

For Figure 16:

- Well 15 should be drawn below a 0 ft contour (no 0 ft contour exists)
- Well 7 should be drawn at a 0 ft contour (not at 40 ft).
- Well 2 should be draw below a 20 ft contour (no 20 ft contour exists).
- Wells 14 and 16 should be drawn below a 20 ft contour.

Is this correct? If not, why not? What is the applicant's estimated projection of cone of depression contour lines for these wells before the project is built and what are the estimated positions of the contour lines after the project's wells are in full production?

41. Does any portion of the Project area or site overlay alluvial fan(s)?

42. The existing Sonoma County General Plan that was last updated in 1989, accepts that the areas identified by DWR as groundwater recharge areas are in fact groundwater recharge areas. In addition, Sonoma County's General Plan maps show that an even larger area located in and around Rohnert Park is also considered important recharge areas. How much state-identified groundwater recharge lands will the applicant's project cover up? How much water, in acre-feet, will the applicant's project remove from the natural groundwater recharge process?

43. The two new Rainey Collector pumping stations are now completed by the SCWA and are located in the banks of the Russian River for a total of seven wells. The Canon Manor West DEIR Volume 1 states on page 2-18 "...much of the basin recharge occurs due to percolation from the Russian River and other large creeks of Rohnert Park". If Rohnert Park has shifted its reliance on water from City owned wells to increased pumping "upstream" by SCWA wells along the Russian River as well as the three SCWA wells on Todd Road, Occidental Road, and Sebastopol Road, doesn't it mean that Rohnert Park will take water from the Russian River gravel beds that would have otherwise flowed into the Santa Rosa Plain Groundwater Basin that serves Penngrove and other overlying users? Will the applicant's wells be affected by this reduction in underground percolation from the Russian River and from Rohnert Park's creeks? If not, please explain why not.

44. Recently the RWQCB identified that the Sonoma County Dump site, located on Meacham Road just South West of Rohnert Park, has leaking liners that were

intended to prevent leachate from percolating into area groundwater supplies. Dumping at this site is no longer possible as it was just closed as of September 1, 2005. What are the regional implications of the applicant's ability to safely extract well water? How will the leaking liners at the Meacham Road dump affect the applicant's wells and the applicant's ability to produce potable groundwater?

45. What are the risks of groundwater contamination associated with the Incremental Recycled Water Program that has designated the same state-identified recharge lands to be the holding pond sites for the proposed University District housing site? Isn't it possible the IRWP holding ponds will also leak and contaminate the entire Basin? How has the applicant prepared for groundwater contamination? What alternate source of water has the applicant considered or envisioned?

46. See attached MMWD letter to SCWA and please comment on it's contents and implications for the applicant's project.

47. Page ES-6 paragraph 4 of the Canon Manor West DEIR states that "protection of significant recharge areas would help ensure groundwater supply for future uses". Shouldn't the applicant's project be abandoned to protect recharge lands? Shouldn't groundwater recharge lands be permanently protected?

48. Section 3.5 of the New Master Water Agreement that binds the Sonoma County Water Agency and the prime water contractors in both Sonoma and Marin County talks about what measures will be taken by the cities in case of an emergency or

impairment. Is it true that under an impairment or emergency the City of Rohnert Park will bring on line all of its wells to supply the needs of both the City and the aqueduct pipeline that serves other water contractors? Has the applicant determined if the agreement allows the City to pump more than the agreed upon amount of 2.3 mgd? Will the Santa Rosa Plain Groundwater Basin decline? At what rate will it decline for every year an impairment or emergency takes place assuming normal years of rainfall? Under abnormal years of rainfall? How will the applicant be affected by Rohnert Park's accelerated pumping rate? Will the accelerated pumping rate exceed the subbasin recharge rate? What contingency plans has the applicant formulated to accommodate accelerated pumping by Rohnert Park in the event that impairment or emergency triggers such pumping?

49. Does the applicant expect to purchase properties adjacent to the proposed project site in the foreseeable future? Could the project expand beyond the present proposed borders in five years? In 10 years? Please estimate groundwater pumping in acre-feet/year for reasonable projected expansion.

50. How does the applicant plan to dispose of sewage and solid waste? Does the applicant plan on becoming party to the IRWP? Will sewage be pumped to a County or city-operated treatment plant? If so, which one? How many gallons of sewage a day does the applicant expect to produce?

51. If the applicant plans on local package treatment, to what degree will the effluent be treated? Would such a plant utilize reverse osmosis? Nano filtration? UV exposure? How will volatiles be removed? How will pharmaceuticals be removed? How will Phthalates be removed? How will viruses be removed? If any of these contaminants are expected to remain in the effluent, please explain the risk to groundwater contamination and the possible effects on human and animal health as a result of such contamination. Where and in what manner will the effluent be disposed of?

In conclusion, we wish to thank the NIGC and the BIA for this opportunity to submit comments on the proposed project and look forward to the written responses that address the concerns expressed herein.

Sincerely,

H.R. Downs

President