



**AMADOR COUNTY
ADMINISTRATIVE AGENCY**

John C. Begovich Building
500 Argonaut Lane • Jackson, CA 95642-9534
Telephone: (209) 223-6470
Facsimile: (209) 257-0619
Website: www.co.amador.ca.us

January 10, 2006

Mr. John Tinger
U.S. Environmental Protection Agency, Region IX
CWA Office of Permits and Standards, WTR-5
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Tinger:

The County of Amador appreciates the opportunity to submit the following comments on the notice of proposed action to issue a new National Pollutant Discharge Elimination System (NPDES) Permit for the Wastewater Treatment Plant at the Buena Vista Rancheria for the Flying Cloud Casino.

Public Hearing and Review Period Extension Request

The County of Amador formally requests that a public hearing be held for this permit in order to provide the public an opportunity to comment on this extremely controversial project. With an average attendance projected at over 12,000 people per day, not including employees (FTEIR, page 11, Table 3.1), and peak attendance anticipated to be much higher, the proposed Buena Vista Rancheria Casino would attract a transient population representing more than 50 percent of the County's current population on a regular basis. The regional significance of this project demands that the community be provided an opportunity to comment on the U.S. Environmental Protection Agencies' (USEPA) potential issuance of a new NPDES Permit.

Furthermore, due to the commencement of the Permit's review period in the middle of the holiday season, the public has not been provided adequate time to digest the technical data included in the Permit documentation. Also, the NPDES Permit's Statement of Basis relies heavily on documentation developed by the Buena Vista Tribe including an archaeological inventory, a biological resource assessment and the NPDES Permit application. However, as of January 6, 2006, this documentation has not been provided to the County or to the public. Without this information, the County and the public have no ability to verify unsubstantiated and conclusory statements included in the Statement of Basis. This lack of access to relevant information during the public review period precludes the public the opportunity to clearly understand the potential local and regional environmental effects anticipated with issuance of the

NPDES Permit. For this reason, the County of Amador respectfully requests that the public comment period be extended by 60 days to allow for the public hearing and detailed review of all of the documentation used to support the NPDES Permit's Statement of Basis conclusions.

Potential Violation of the Endangered Species Act Regulations

The NPDES Permit's Statement of Basis includes conclusory statements regarding the permit's impacts on threatened and endangered species, presumably based on the "Biological Resource Assessment for the 67 acre Buena Vista Rancheria Project" (Northfork Associates, September 26, 2005). However, as of January 6, 2006, the Biological Assessment was not provided to the County for review. Therefore, the statements included in the Statement of Basis cannot be verified.

Based on its title, the Biological Assessment seems to have focused exclusively on the on-site biological resources, to the exclusion of any sensitive offsite resources. Based on the nature of the NPDES Permit's focus on identifying effluent discharge limitations in downstream waterways, the complete lack of any analysis of biological resources in these offsite waterways and the adverse project effects that could occur in these drainages represents a clear deficiency in the analysis. For example, there is no discussion of the fact that discharge from the site flows directly through an area designated on August 23, 2005 by the U.S. Fish and Wildlife Service as critical habitat for the California tiger salamander (*Ambystoma californiense*), a federally-threatened species and California Species of Special Concern.

The Statement of Basis ignores the fact that the on-site pond located directly adjacent to the proposed Wastewater Treatment Plant and other offsite ponds in the local area may provide breeding habitat for this species. The surrounding upland habitat both on and off of the site, including the location of the Wastewater Treatment Plant, may also provide critical aestivation habitat for this species during non-breeding periods.

The Statement of Basis also completely ignores threatened and endangered plant species known to occur in the local area. These include federally threatened Ione Manzanita (*arctostaphylos myrtifolia*), federal and state endangered Ione Buckwheat (*Eriogonum apricum* var. *apricum*), and federal and state endangered Irish Hill Buckwheat (*Eriogonum apricum* var. *prostratum*). The USFWS is very concerned about the impacts issuance of the NPDES Permit would have on these species, specifically related to the growth-inducing nature of the proposed project and the effects of extensive offsite improvements (K. Brown, USFWS, pers. comm., Jan.5, 2006).

USFWS has authority over projects that may affect the continued existence of a federally listed (threatened or endangered) species. Section 9 of the Endangered Species Act (ESA) prohibits the take of federally listed species; take is defined under ESA, in part, as killing, harming, or harassment. Under federal regulations, take is further defined to include habitat modification or degradation where it actually results in death or injury to wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Section 7 of ESA outlines procedures for federal interagency cooperation to conserve federally listed species and designated critical habitat. Section 7(a)(2) requires federal agencies to consult with USFWS to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species. Based on the information included in the Statement of Basis, USEPA has not initiated formal consultation with USFWS, and therefore, may be in violation of the Section 7 requirements of the Endangered Species Act.

Inconsistency with Basin Plan Policies

The “Water Quality Control Plan for the Sacramento and San Joaquin River Basin, Fourth Edition” (Basin Plan) describes state policies incorporated by reference including the consolidation of wastewater collection and treatment facilities in order to implement sound water quality management program. The intent of this policy is to make consolidation of wastewater collection and treatment facilities the rule rather than the exception. Issuance of the NPDES Permit for the proposed Wastewater Treatment Plant would clearly violate this consolidation policy.

Need for Drainage Analysis

The NPDES Permit’s Statement of Basis indicates that the Wastewater Treatment Plant’s discharge will be directed into a drainage that would also be used to drain storm water runoff from the developed portion of the site. This drainage flows into a culvert under Coal Mine Road, a roadway that has experienced flooding in the past. No analysis is included in the Statement of Basis regarding the anticipated increase in peak storm water discharge associated with the site development or the Wastewater Treatment Plant’s contribution to this increased storm water peak. In the event the capacity of the drainage culvert is exceeded during a large storm event, flooding of Coal Mine Road could occur. Because Coal Mine Road provides the primary access to the Casino, flooding of this roadway could block emergency vehicle access and evacuation of the facility. A detailed drainage analysis should be prepared by USEPA before a decision is made on this NPDES Permit in order to ensure public safety is not adversely affected by its implementation.

On-site Water Quality Degradation

The NPDES Permit’s Statement of Basis states on page 1 that the natural spring and existing pond located in the higher elevations of the site will not be affected by construction or casino-related activities. However, the location of a proposed spray irrigation field, as identified in Figure 1-2 of the Buena Vista Rancheria Water and Wastewater Feasibility Study (Hydroscience Engineers, Inc., 2005), is located directly upgradient of the spring’s headwaters. Due to the steep topography of the proposed spray field (up to 20% slopes in some areas), surface flows of the wastewater would clearly flow into the spring, particularly during wet weather conditions, degrading the water quality of this spring, the onsite pond and downstream waterbodies.

Furthermore, the Statement of Basis provides no information regarding the use of the spray irrigation/subsurface disposal area in the southern portion of the property, as identified in the Hydrosience Engineers report. This inconsistency needs to be clarified and a full analysis of the potential impacts associated with use of a spray irrigation/subsurface disposal area needs to be made available to the public before issuance of the NPDES Permit.

Inadequate Wastewater Treatment Design Capacity

The NPDES Permit's Statement of Basis states on page 2 that the facility has been designed for a peak weekend flow of 350,000 gallons per day (gpd). However, in describing the treatment process in the last full paragraph on page 2, the document states that wastewater would flow to two parallel aeration basins of 57,600 gallons each with an average daily residence time of approximately 24 hours. Based on this residence time, the two parallel aeration basins only have sufficient capacity to accommodate 115,200 gallons of wastewater per day. Based on the current design, the system does not have adequate capacity to accommodate the identified average annual flow of 120,000 gpd and is substantially undersized to accommodate the projected average weekend flow of 180,000 gpd or projected peak flows of 350,000 gpd. This lack of adequate treatment capacity seems to be exacerbated by the fact that wastewater would be recirculated from the membrane basins back to the anoxic basin at a rate of approximately 4:1, which would increase the system's capacity requirements.

The flow rates included in the NPDES Permit's Statement of Basis conflict with the flow rates identified in the Water and Wastewater Feasibility Study (Hydrosience Engineers, Inc., 2005) prepared for the site. The Feasibility Study identifies a weekday flow of 150,000 gpd, a weekend design capacity of 250,000 gpd, and an average daily flow of 170,000 (Table 6-1, page 6-2), whereas the average daily flow identified in the Statement of Basis is 120,000 gpd and the weekend flow is 180,000 gpd. The average daily flow identified in the Feasibility Study is approximately 41 percent higher than in the Statement of Basis. No explanation is provided in the Statement of Basis regarding this discrepancy.

Please provide clarification regarding the term "mixed liquor" as used in the first full paragraph on page 3 of the NPDES Permit's Statement of Basis.

The NPDES Permit's Statement of Basis states in the fifth full paragraph on page 3 that the Casino anticipates that approximately 30% of treated effluent will be recycled and re-used at the casino. These uses will include irrigation and non-potable uses in the casino such as toilet flushing. The largest majority of this use would typically be for irrigation requirements. However, during winter months, little to no irrigation would be necessary. Thus, discharge of treated wastewater into the local drainages would be higher than assumed in the NPDES Permit's Statement of Basis.

The NPDES Permit's Statement of Basis states in the second to last paragraph on page 3 that storm water runoff from the wastewater treatment plan area will be collected and directed back to the plant. However, no information is provided regarding the volume of storm water anticipated to be collected and treated at the plant or the plant's capacity to treat this additional storm water during average and peak events.

Cultural Resources and Section 106 Compliance

The Draft Tribal Environmental Impact Report (DTEIR) prepared by the Buena Vista Rancheria of Me-Wuk Indians states on page 106 that compliance with Section 106 of the National Historic Preservation Act (NHPA) is required for both On- and Off-Reservation project effects due to the involvement of federal agencies in the project's permitting process. However, no evidence is provided in the NPDES Permit's Statement of Basis that Section 106 compliance has been completed by the USEPA.

As specifically stated in the DTEIR, Section 106 requires federal agencies to take into account the effects of their undertakings on historic properties. Section 106 offers the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Properties an opportunity to comment on such undertakings. The Council's implementing regulations, "Protection of Historic Properties" can be found in 36 CFR Part 800. The goal of the Section 106 review process is to offer a measure of protection to sites, which are determined eligible for listing on the National Register of Historic Places. The criteria for determining National Register eligibility are found in 36 CFR Part 60. Recent amendments to the Act (1986, 1992, and 2001), including revisions to the implementing regulations have strengthened the provisions for Native American consultation and participation in the Section 106 review process.

The Section 106 process requires consultation with the agencies or officials listed in 36 CFR 800.2 and with any Indian Tribe that attaches religious and cultural significance to the property. The Ione Band of Miwok Indians (Ione Band) specifically states in their June 22, 2005 DTEIR comment letter that the project property is considered the most important cultural site to the Miwok people and that they have a direct cultural affiliation with the significant cultural and historic resources on the property. These resources are well documented by anthropological reports and are recorded in the state sacred lands database and in the California Historic Resources Information System. However, no evidence is provided in the NPDES Permit's Statement of Basis that consultation has occurred with the Ione Band, as required by Section 106.

The NPDES Permit's Statement of Basis provides no information regarding the location of a Native American cemetery on the site and the effects of issuing the NPDES Permit on Native American cultural items and human remains. There is no reference whatsoever regarding the presence of Native American remains on the site, although the Ione Band has stated in the record their concerns regarding the project's effects on their ancestral burial grounds.

The Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001) states that the intentional excavation of Native American cultural items is permitted only if the objects are excavated or removed following the requirements of the Archaeological Resources Protection Act (16 U.S.C. 470) and its implementing regulations, and after consultation with Indian tribes (43 CFR Section 10). Because issuance of the NPDES Permit has the potential to result in disturbance of Native American cultural items and human remains and

because no consultation has occurred with the Native American Tribe directly affiliated with the property (Ione Band), the issuance of the permit would directly conflict with the requirements of NAGPRA.

The Section 106 process also requires the consideration of the requirements of other statutes, as applicable, such as the National Environmental Policy Act of 1969 (NEPA) and the American Indian Religious Freedom Act (25 U.S.C. 1996). However, no evidence is provided in the NPDES Permit's Statement of Basis that compliance with these regulations has been achieved. The lack of NEPA compliance is of particular concern because USEPA has relied upon an inadequate Tribal Environmental Impact Report that does not provide the necessary analysis of potential adverse environmental effects that would be required in a NEPA document. The lack of NEPA documentation, as required by 40 CFR 1500, seems to be a clear violation of the federal law.

The Native American Heritage Commission submitted a comment letter on the Notice of Preparation for the DTEIR directing the Buena Vista Rancheria to consult with the Ione Band as the most likely descendents of the remains buried in the on-site cemetery. However, according to the Ione Band (June 22, 2005 DTEIR comment letter), no effort has been made by the Buena Vista Rancheria to consult with the Ione Band regarding significant cultural resource impacts on the site.

The NPDES Permit's Statement of Basis completely lacks any analysis of the potentially adverse cultural resource effects associated with permit implementation. The Statement of Basis simply includes the conclusory statement that no construction or casino-related activities will disturb the archaeological resource protection area. Based on the location of this protection area directly adjacent to the casino entrance and access road and the fact that an average of over 12,000 people, not including employees, will visit the casino per day (FTEIR, page 11, Table 3.1), it is hard to fathom how USEPA can conclude that no impact to this area will occur with issuance of the NPDES Permit. Without any information to support the conclusory statements in the Statement of Basis and a complete lack of data regarding the location of Native American remains on the site, the issuance of the NPDES Permit would clearly violate federal laws regarding Native American resource protection.

In order to ensure compliance with the Section 106 requirements and other applicable regulations, the USEPA must initiate consultation with the State Historic Preservation Officer (SHPO) and with other affected tribes and complete the Section 106 process prior to issuing the NPDES Permit.

Technical Review

Amador County contracted with RBF Consulting, a multi-disciplinary civil engineering, design and planning firm, to conduct a technical review of the NPDES Permit documentation. Attached as Appendix A to this letter are additional comments provided by RBF Consulting. We request that these comments also be addressed by USEPA.

The County of Amador is extremely concerned that the proposal to issue an NPDES Permit will have significant impacts that have not yet been assessed. The County strongly urges USEPA to extend the public review process and conduct a public hearing so that these impacts can not only be discussed but also properly analyzed prior to a decision. If you have any questions regarding this letter or our concerns, please do not hesitate to contact me at (209) 223-6470.

Sincerely,



Patrick Blacklock
County Administrative Officer

- c: Honorable Members, Amador County Board of Supervisors
Ms. Andrea Hoch, Legal Affairs Secretary to Governor Arnold Schwarzenegger
Mr. Richard McHenry, California Regional Water Quality Control Board
Ms. Kathy Brown, Senior Fish & Wildlife Biologist/U.S. Fish & Wildlife Service
Mr. Tom Hoover, Jackson Valley Irrigation District
Mr. Joe Spano, California Department of Health Services
Mr. Larry Eng, Acting Chief/Region II California Department of Fish & Game
Buena Vista Tribe of Me-Wuk Indians of California
Mr. John Hahn, County Counsel
file

Attachment: Appendix A – RBF Consulting Technical Memorandum

APPENDIX A

M E M O R A N D U M

To: Paul Klein, MS 1300 JN 35-100534
From: Reena Thomas, MS 900
Date: January 9, 2006
Subject: Buena Vista Rancheria, Flying Cloud Casino
Review of Proposed NPDES Permit No. CA 0049675

The purpose of this memorandum is to provide a summary of potential issues related to the proposed NPDES Permit for the Proposed Buena Vista Rancheria Flying Cloud Casino.

HISTORY

The Buena Vista Rancheria is proposing to construct a wastewater treatment plant (WWTP) to serve a casino with approximately 56,000 square feet of gaming. The regulating agency for the WWTP is the U.S. Environmental Protection Agency – Region 9 (EPA) who has Clean Water Act jurisdiction of Tribal Lands. Because treated effluent will reach State waters, the EPA applies water quality standards as adopted by the State of California for receiving waters. EPA has prepared a draft National Pollutant Discharge Elimination System (NPDES) Permit for the wastewater treatment plant.

The wastewater treatment plant is anticipated to have an average annual flow of 120,000 gallons per day (GPD) and will be designed for a peak weekend flow of 350,000 GPD. Treated effluent will be discharged to an unnamed tributary to Jackson Creek, which subsequently flows into Dry Creek and to the Lower Mokelumne River.

COMMENTS

- ◆ It is unclear how the design peak weekend flow of 350,000 GPD is calculated. More information is required showing anticipated peak wastewater generation;
- ◆ The descriptions of the capacities of the various process components of the wastewater treatment plant do not appear to provide for treatment of 350,000 GPD. The process descriptions should be further clarified to confirm sufficient capacity would be available to treat the projected maximum capacity on consecutive weekend days. The process

describes a residence time of 24 hours in the aeration tanks with a combined capacity of 115,200 gallons. At a sustained flow (holiday weekend) of 230,000 GPD the residence time is reduced to approximately 12 hours and at a flow of 350,000 GPD the residence time is reduced to less than 8 hours. Is this sufficient to treat the projected flows. The equalization capacity appears to be sized for daily equalization and not sustained equalization.

- ◆ Reliability features of the recycled water treatment plant as required by the California Department of Health Services (DHS) should be included as part of the proposed facility and described;
- ◆ The recycled water storage reservoir is proposed to double as the chlorine contact chamber. What standard is being utilized for design and what module contact time is proposed?
- ◆ Well water in and around Ione is traditionally high in arsenic and other heavy metals that are not removed through the conventional wastewater treatment process. This fact results in high levels of these constituents in the sludge and makes landfill disposal difficult as the sludge can be classified as “toxic.” Is there a contingency plan for disposal of sludge that has high levels of “toxic” materials?
- ◆ Monitoring requirements for Priority Toxic Pollutants listed for the California Toxics Rule (CTR) are required within 90 days of discharge from the treatment plant and in the 3rd and 5th year of the permit. If an exceedance of a criteria or potential for exceedance is detected, the permit may be re-opened to require appropriate limits. This allows for Priority Toxic Pollutants to potentially be discharged for some period of time before any action by the regulatory agencies occurs. The State Implementation Plan (SIP) for the CTR requires that if a compliance schedule is granted for a CTR constituent, interim requirements and dates for compliance be established. If CTR limits are not reached and exceedance occurs, what are the interim requirements and dates for their achievement in the permit? Monitoring, reporting, and consequences should be more clearly defined.
- ◆ A 2.8-acre jurisdictional wetland is located in the northwest corner of the site. What, if any, coordination with Army Corps of Engineers, RWQCB, or USFWS is required?
- ◆ The Tribe has agreed to follow the reclamation criteria established by DHS for the use of reclaimed water. Has an engineering report been prepared in compliance with State of California requirements? Part II Special Conditions, Section C of the permit describes meeting Title 22 requirements for irrigation only. What about the proposed interior use and compliance with Title 22? Will DHS review the plans for proposed interior use of recycled water? Additional information regarding acreage of reclaimed water irrigation, approximate volume to be irrigated, and volume proposed for interior use is suggested. It is stated that 30% of the treated effluent will be recycled and re-used. Optimization of recycled water for beneficial use is recommended.
- ◆ Part III Monitoring and Reporting does not address cross connection control, verification and ongoing testing since there will be the interior use of recycled water. How will this be completed and to what standards?
- ◆ Sanitary Sewer Overflows (SSOs) within the collection system are not considered within the permit. The Discharger should be expected to take all necessary steps to reduce SSOs including the preparation of a Sanitary Sewer System Operation, Maintenance, Overflow Prevention, and Response Plan.