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

March 26, 2009

Brad Mehaffy
NEPA Compliance Officer
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Subject: Final Environmental Impact Statement (FEIS), Graton Rancheria Casino and Hotel Project, Sonoma County, California (CEQ # 20090050)

Dear Mr. Mehaffy:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA reviewed the Draft Environmental Impact Statement (DEIS) and provided comments to the National Indian Gaming Commission (NIGC) on June 4, 2007. We rated the DEIS as Environmental Concerns - Insufficient Information (EC-2) because of concerns regarding impacts to groundwater resources from the preferred Alternative A. The DEIS determined these impacts would be significant to neighboring shallow wells and that the project's groundwater use would represent approximately 4.5% of all current and future pumping in the Southern Santa Rosa plain, a relatively large percentage for a single project in what may be an overdrafted groundwater basin[*]. We recommended selection of Alternative H, a reduced intensity casino on the Wilfred site, because this alternative would require substantially less sustained groundwater pumping than the preferred alternative.

The FEIS concludes that groundwater levels are rebounding from an historical overdraft condition due to decreasing groundwater pumping since the late 1990's (Appendix G, p. 73). Nevertheless, we continue to have concerns regarding groundwater resources and recommend selection of Alternative H, which meets the project purpose and need while avoiding certain environmental impacts. Alternative H would pump 40% less groundwater than the preferred Alternative A and require a smaller parking lot that could be reconfigured to avoid wetlands. The site plan included for Alternative H (Fig 2-37), however, does not show wetland avoidance. Wetlands could be avoided on the eastern portion of the parcel by reconfiguring the parking lot, and by relocating the wastewater treatment plant north. We recommend these changes be made

[*] A determination of whether or not the basin is overdrafted will be made by a joint Sonoma County Water Agency (SCWA) and US Geological Survey (USGS) study in future years

if Alternative H is selected. A reduced project footprint could also benefit the federally endangered California tiger salamander. The impact avoidance that could occur under Alternative H is more consistent with the goals and purposes of NEPA (42 U.S.C. § 4331).

Offsite wastewater treatment would benefit wetlands and the California tiger salamander by obviating the need for an onsite wastewater treatment plant and related habitat disturbance. The FEIS acknowledges that offside treatment is preferred (App. FF, p. 85), but indicates that this option is not viable since an agreement with the regional sewer authority has not been reached at this time. We recommend that the project proponents continue to pursue such an agreement if the project moves forward.

EPA reviewed the final general conformity determination (Appendix W). Our comments on that determination are attached. We understand that offsets from stationary sources have been purchased to mitigate project impacts, and that an alternative "equally enforceable measure" for the acquisition of emission credits, referenced on p. 9 of the final conformity determination, is no longer being considered.

The FEIS includes 75 pages of mitigation measures. We recommend commitments to all mitigation measures be included in the Record of Decision (ROD), and that a mitigation monitoring and enforcement plan, per 40 CFR 1505.2(c), be developed to ensure mitigation is implemented. This is vital because the project will result in significant impacts to environmental resources including soil, water, air, and biological resources, unless mitigation measures are fully implemented and successful.

EPA appreciates the opportunity to review this FEIS. When the ROD is signed, please send a copy to the address above (mail code: CED-2). If you have any questions, please contact me at 415-972-3521, or Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

/s/

Kathleen M. Goforth, Manager
Environmental Review Office (CED-2)

CC: Greg Sarris, Tribal Chairman, Federated Indians of the Graton Rancheria
Devin Chatoian, Environmental Director, Federated Indians of the Graton Rancheria
Patrick O'Mallan, Bureau of Indian Affairs
Greg Tholen, Bay Area Air Quality Management District

Specific SIP Allowance, page 8

Characterization of SIP status is inaccurate: On April 22, 2004, EPA made a finding that the San Francisco Bay Area had attained the 1-hr ozone standard. In doing so, EPA determined that the Clean Air Act's requirements for reasonable further progress, attainment demonstrations, and contingency measures were not applicable to the Bay Area, and, therefore, did not take action on those plan components. In that same action, EPA approved certain elements of the 2001 plan, including the emissions inventory, but did not approve the attainment demonstration nor the plan as a whole. Note that a finding of attainment suspends certain requirements, but does not result in a change of attainment status.

Characterization of status with respect to 8-hr ozone standard is out of date: Ambient monitoring data indicate that the San Francisco Bay Area attained the 8-hr standard by June 15, 2007. However, the BAAQMD has not submitted a redesignation request nor a maintenance plan, both of which are required in order for EPA to consider reclassifying the area as an ozone maintenance area, and does not appear to be pursuing redesignation. In the meantime, a stricter ambient air quality standard for ozone has been promulgated by EPA. Monitoring data indicate the Bay Area is not attaining the 2008 ozone standard; however, final designations will not be made for at least a year.

Conclusion, Section 5.0

There appears to be a typographical error. The reference to 40 CFR 93.155(d) should probably be 40 CFR 93.155(b).