Colusa Indian Community Council
Cachil Dehe Band of Wintun Indians

September 17, 2013

Dear Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee:

My name is Hazel Longmire, and I am the Vice Chairperson the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community ("Colusa"). We are located in rural Colusa County, California. Our Tribe deeply appreciates this opportunity to share with you our experience with the way that the Department of the Interior ("DOI") and its Bureau of Indian Affairs (BIA) has made so-called two-part determinations to take newly-acquired land into trust for gaming purposes.

Unfortunately, I speak about the process from firsthand experience. On December 3, 2012, Assistant Secretary of the Interior – Indian Affairs Washburn published a Federal Register notice that he had approved acquisition of off-reservation lands for gaming purposes for the benefit of the Enterprise Rancheria and the North Fork Rancheria in the Sacramento Valley and the San Joaquin Valley, respectively. We write today to oppose the way that DOI and BIA currently are implementing "two-part determinations" for off-reservation gaming acquisitions under 25 U.S.C. Sec. 2719. We specifically oppose acquisition of off-reservation gaming lands for the Enterprise Rancheria because it threatens to destroy 30 years of hard work by our Tribe to lift itself from poverty just as we are succeeding in diversifying our tribal economy.

Congress required consultation in two-part determinations under IGRA so that DOI could not avoid consideration of the adverse impacts of off-reservation gaming on nearby governments, including other Indian tribes. Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(A), requires that the Department consult not only with the Indian tribe applying to permit gaming on off-reservation land acquired after October 17, 1988, but also with "appropriate State and local officials, including officials of other nearby Indian tribes," to evaluate the detriment to the surrounding community of the proposed casino. 25 USC § 2719(b)(1)(A). In its 2011 Record of Decision ("2011 ROD") approving Enterprise's application for a two-part determination, then-Assistant Secretary Echo Hawk wrote that "[t]he Department also will apply heavy scrutiny to tribal applications for off-reservation gaming on lands acquired after October 17, 1988 to ensure that they do not result in a detrimental impact to communities surrounding the proposed gaming site." 2011 ROD at 61 (*Please note that all Documents referenced herein are available at the website*, https://sites.google.com/site/longmiretestimony/). He also made the categorical statement that "[t]he Department will not approve a tribal application for off-reservation where a nearby Indian tribe demonstrates that it is likely to suffer a detrimental impact as a result." *Id.* at 64.

Obviously, IGRA requires that DOI make an independent assessment of whether and how allowing the applicant tribe will impact not just existing tribes' casinos, but also the tribal

governments and tribal citizens that depend on revenue from those casinos. The only way that the DOI and BIA could make an independent assessment would be to consult directly with the tribes that may be affected, rather than using an arbitrary definition of what constitutes "nearby" tribes without regard to actual conditions, and the result-driven reports prepared by consultants bought and paid for by gaming developers. In BIA's own words, "[w]ithout early consultation, the Bureau may develop proposals based on an incomplete and anecdotal understanding of the issues that surround a particular matter. As a result, Bureau proposals often create severe unintended consequences for tribal governments." BIA Government-to-Government Consultation Policy at 3 (2000). BIA's failure to consult with our Tribe led to just such unintended consequences when it approved Enterprise Rancheria's application to conduct off-reservation gaming on a site located not only in the heart of our casino's primary market area, but between our Reservation and our other major sources of patrons.

Yuba County Entertainment, LLC ("YCE"), the sole member of which is Forsythe Racing, Inc., an Illinois corp. wholly owned by Gerald Forsythe of Chicago, Illinois, owns extensive properties just south of Marysville, California, in unincorporated Yuba County. The land YCE owns was approved by the voters of Yuba County as a racetrack complex in 1998. Yuba County Board of Supervisors' Letter to BIA (2009). In 2001, however, YCE began planning to use a portion of the racetrack land for a casino with Enterprise as the beneficiary of the land, if not the recipient of the lion's share of the profits. 2002 Enterprise Application at 164 (2001 Innovation Group Report). After a decade of supposed analysis, DOI approved virtually the same casino as proposed by YCE in 2002. Final Environmental Impact Statement, Enterprise Rancheria Gaming Facility and Hotel Fee-To-Trust Acquisition (2009) ("EIS"), available at http://enterpriseeis.com/documents/final_eis/report.htm.

The Colusa Reservation is only 30 miles from the YCE parcel – closer to it than Enterprise's own headquarters or reservation. During most of the time that the Enterprise application was pending with DOI, the definition of "nearby Indian tribes" with which the Department was required to consult included all tribes within 50 miles. Checklist for Gaming Acquisitions at 7 (2007); 73 Fed. Reg. 29354, 29357 (2008) (discussing the 50-mile threshold in effect from 1997 through 2008). In 2008, DOI shrank the threshold for consultation with "appropriate State and local officials" and "nearby Indian tribes" from 50 to 25 miles. The new rule explained the decision to use 25 miles rather than 10 or 50 as the threshold for consulting with non-tribal governments. *Id.* DOI gave no notice or explanation for reducing the area within which it would consider Indian tribes to be "nearby" a proposed casino by a factor of 75%, however. Compare the final 25 CFR Part 292 rule, 73 Fed. Reg. at 29357, adopting the 25-mile threshold, with the proposed rule including a 50-mile threshold, 65 Fed. Reg. 55471, 55473 (2000).

For the purpose of determining whether a tribe is in close proximity to a gaming establishment, DOI exercises a double standard. In evaluating "36 miles from the Tribe's existing headquarters in Oroville, California" to the YCE parcel, DOI found that the distance was "relatively short," permitting the tribe to "regulate the conduct of class III gaming and exercise governmental power of the Site." Record of Decision; Secretarial Determination Pursuant to the Indian Gaming Regulatory Act for the 40-acre Yuba County site in Yuba County, California, for the Enterprise Rancheria (2011) ("2011 ROD") at 62; Record of Decision; Trust Acquisition of

the 40-acre Yuba County site in Yuba County, California, for the Enterprise Rancheria of Maidu Indians of California (2012) ("2012 ROD"). Moreover, DOI found the YCE parcel to be "in relatively close proximity to the Tribe's existing community," which is located almost entirely in Oroville. *Id.* at 41. Colusa, Mooretown, and Auburn's governments, lands, and people are actually closer to the proposed resort than either Enterprise's headquarters or its existing gaming-eligible reservation trust lands. *See e.g.*, Enterprise Lands in Context; Enterprise Lands in Context Google Maps <http://goo.gl/maps/LhUq7>.

After verbal requests for consultation were ineffective, Colusa formally requested consultation. Letter from Colusa Indian Community Council to BIA (2009). The BIA refused our request, hiding behind the new rule restricting "nearby Indian tribes" to those within 25 miles of the proposed off-reservation casino. Letter from BIA to Colusa Indian Community Council (2009). Instead of consulting with Colusa to determine whether it would be adversely affected, BIA invited Colusa to comment on the EIS along with other members of the public, essentially requiring Colusa to *prove* that it would be adversely affected before BIA would consult with it. *Id.* That violated both DOI's fiduciary responsibility to affected Indian tribes, and IGRA, which requires DOI to determine whether a proposed casino would adversely affect "nearby Indian tribes". In the 2008 rule, DOI wrote that "the purpose of consulting with nearby Indian tribes is to determine whether a proposed gaming establishment will have detrimental impacts on a nearby Indian tribe that is part of the surrounding community." 73 Fed. Reg. at 29356. The refusal by BIA to consult turned the purpose of consultation from a shield for tribes from adverse effects of federal actions, to a shield for those federal actions from candid discussion of those actions with the Departments' tribal trustees.

DOI had been on notice since at least Enterprise's 2002 application, however, that the proposed casino on YCE's land would "cannibalize" much of the business of other tribal casinos, including the Colusa Casino, and thus deprive the tribal governments that owned them of much-needed income to support services to their members. 2002 Enterprise Application at 164. Obviously, a federal action that will lead to cannibalization of the business upon which a tribal government depends to support its membership is an adverse effect on its "governmental functions, infrastructure, and services." As demonstrated by the discussion of "cannibalization" in Appendix M to the FEIS, and indeed in Enterprise's original application, a 25-mile threshold is far too small to include all tribes affected by a new casino, because tribes whose business specifically would be targeted by YCE and Enterprise were generally farther than 25 miles away. EIS, Appendix M at 6 (2006) available at http://enterpriseeis.com/documents/final_eis/files/appendices/vol1/Appendix_M.pdf ("Appendix M"). Colusa submitted comments on the application and the EIS, but BIA never did consult with us. Moreover, the consultant responsible for preparing the Enterprise FEIS knew about the likely impacts on our casino, because we had used the same consultant in preparing a 2003 tribal EIS for a proposed expansion of our facility.

The total population of rural Colusa County is about 25,000. Because so few people live in Colusa County, most of our casino's customers come from Yuba City, Marysville and North Sacramento. Many of our employees also live in those same areas. In a rural area such as ours, people think nothing of driving 30 or 40 miles, but if Enterprise is allowed to leapfrog over us and open a casino on the YCE parcel near Marysville, our casino would sustain devastating

reductions in revenues, with equally devastating impacts on our tribal government, our members and neighbors in Colusa County.

Enterprise's EIS guessed that the proposed Enterprise Casino in Yuba County would have a minor (between 3% and 7%) impact on what it supposed to be the gross revenues of Colusa's casino. It did not even try to guess at the impacts on the tribal government. The Enterprise EIS based that guess on purely hypothetical assumptions, without any actual data from the Colusa Casino concerning its revenues, costs of doing business or actual market area. At no time did the drafters of the EIS or BIA contact Colusa to determine what the actual effects on the tribe or its casino would be. As the drafters wrote: "much of the information contained in this report was received from third parties which Gaming Market Advisors did not validate or verify." Appendix M at 131.

Studies by nationally-renowned experts and based on empirical facts, however, have found that the proposed Enterprise Casino which will be located in the heart of the Colusa Casino's core market area, will have far greater adverse impacts on our Tribe and our casino. To document those impacts, Colusa commissioned an independent study by Alan Meister and Clyde Barrow, two of the country's leading experts on the tribal gaming industry, and gave them access to actual data about the Colusa Casino's revenues, market area and patrons. This study projects an immediate decline in gross casino revenues of 39% when the Enterprise Casino opens, and a 55% decline in gross revenues when the Enterprise Casino reaches full operational capacity two years later. As a result, the Colusa Casino's EBITDA would decline by 65% when the Enterprise Casino opens, and by 77% when that casino reaches full operational capacity two years later. Further, the Colusa Casino's workforce would shrink by 35% in conjunction with the opening of the Enterprise Casino, and by 50% after two years. Nathan Associates Inc. & Pyramid Associates, LLC, *Economic Impacts of the Proposed Enterprise Rancheria Casino on the Colusa Indian Community & Colusa Casino Resort* (2013) ("Meister & Barrow").

The impact on Colusa's tribal government and the vital programs and services it provides to tribal members would be even more catastrophic, because the tribal government derives 85% of its non-grant, non-contract revenue from the Colusa Casino. Upon opening of the Enterprise Casino, Colusa's tribal government is projected to experience a 77% decline in revenues available for discretionary expenditures, and a 90% decline by two years later. Meister & Barrow. In short, approving a compact for an Enterprise Casino in Yuba County would virtually assure the impoverishment of the Colusa Indian Community, in order to enrich the Chicago gaming developer backing Enterprise's move from its existing gaming-eligible trust land base to a distant location with which Enterprise never has had a historical connection.

Meister and Barrow demonstrated that hundreds of our gaming and governmental employees will lose their jobs, Colusa County would lose hundreds of thousands of much-needed dollars every year, and our tribal citizens will lose many of the tribal programs and benefits that are needed to overcome the legacy of generations of poverty and deprivation. We are informed that a confidential study produced for California's Governor confirms that the proposed Enterprise Casino would have ten times more adverse impact on our casino than estimated in the Enterprise EIS.

Federal agencies have a duty in general to be skeptical of the claims of the beneficiaries and proponents of requested federal decisions, and DOI has a fiduciary responsibility to all tribes to consider the adverse effects of its actions on them. Despite the Department's promise to apply "heavy scrutiny" to off-reservation applications, and that it would not approve off-reservation gaming that was "likely to [cause] a detrimental impact" on another tribe, however, it has relied upon the self-serving and unsupported claims of the project proponent to approve a project that would be exceptionally detrimental to surrounding tribes, while hiding behind an arbitrary 25-mile line to avoid consulting with those very same tribes.

The primary tool for analyzing the impacts of taking a parcel into trust for gaming purposes, like most major federal actions, is the National Environmental Policy Act ("NEPA"). NEPA requires that a federal agency take a "hard look" at the environmental impacts of its actions. Those environmental impacts include socioeconomic impacts. In addition, Section 20 of IGRA and the regulations governing acquisition of land in trust for Indian tribes, 25 CFR Parts 151 and 292, require analysis of the economic impacts. While NEPA regulations permit a project proponent to fund the environmental impact statement ("EIS"), they require that the federal agency deciding whether to approve the project exercise oversight and exercise its independent judgment over preparation of the EIS. 40 CFR § 1506.5. A federal agency is required to "exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project." *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir.1997).

DOI did not exercise *any* skepticism with regard to the EIS paid for by YCE. YCE paid for the lawyers and environmental consultants to draft an application and a NEPA environmental assessment ("EA") on behalf of Enterprise, which only cursorily studied the environmental impacts of a casino on YCE's land near Marysville, CA. In 2005, BIA decided to require an EIS, which is longer than an EA. The same environmental consultant that produced the EA added an illusory alternative of constructing a casino on Enterprise's existing reservation to the EA as part of converting it into an EIS, but did not consider as an alternative putting into federal trust for gaming a parcel of land in Butte County that Enterprise owns and is zoned for a hotel. Also, several of the studies underpinning the EIS were not updated from the EA stage. As part of its contract, the environmental consultant producing the EIS also had a contract to obtain the permits necessary for construction of the casino once DOI had acquired the land in trust, giving it a financial incentive to ensure that the casino was approved, rather than act as a neutral analyst for DOI.

In order to ensure that its preferred alternative casino was approved, the YCE-funded EIS "contrive[d] a purpose so slender as to define competing 'reasonable alternatives' out of consideration (and even out of existence)." *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir.1997). The Council on Environmental Quality's ("CEQ's") regulations require that an EIS "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13. "[T]he statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an FEIS." *Westlands Water Dist. v. U.S. Dep't of Interior*, 376 F.3d 853, 866 (9th Cir.2004). As admitted by DOI in both the 2011 and 2012

RODs, Congress in IGRA intended confine tribal casinos to pre-1988 Indian Lands with extremely limited exceptions. 25 USC § 2719; 2011 ROD at 60.

Nonetheless, the Department approved an EIS that disregarded that important Congressional policy, and aimed solely at revenue maximization by a Class III casino, guaranteeing that only the largest Las Vegas-style casino in the best location possible would fulfill that purpose and need. EIS at 1-2 & 1-8. Thus, the two non-gaming alternatives were rejected because they did not include Class III gaming or produce enough revenue. The purpose and need was further narrowed to require the presence of YCE as Enterprise's gaming developer and manager (because it already owned the land that it would sell to Enterprise at an inflated price). *Id.* at 1-9. The EIS considered the alternative of a modest casino on Enterprise No. 1, but found that while it would produce a profit, it would produce far less than at the YCE site, and was thus rejected it would not produce as much income – income derived from cannibalizing other tribal governments' casino businesses. EIS at 2-39.

The report's authors, retained by YCE, speculated that it was "possible … that YCE would decline to enter into the agreement due to the changed circumstances and decreased potential revenues likely to result from Alternative D," the on-reservation casino. EIS at 2-41. Having been retained by YCE, the environmental consultant knew that the "changed circumstances" were that Enterprise would not need to purchase YCE's land or employ it as its developer/manager.

Indicative of its inattention to detail, the Department repeatedly misidentified the land owned by YCE that it proposed to take into trust for Enterprise. The YCE-funded EIS, the 2011 letter to Governor Brown, his 2012 concurrence in the acquisition of the YCE parcel, Assistant Secretary Washburn's decision to take the land into trust, and the Federal Register notice announcing that decision, among other documents described the land as totaling 40 acres. *E.g.*, 77 Fed. Reg. 71612 (2012). Many of the same documents, however, as well as the policy of title insurance proposed to be issued to the United States, included legal descriptions of a parcel of approximately 82.65 acres. Baker-Williams Engineering Group Letter to George Forman (January 2, 2013). DOI later issued a "correction" of the legal description and parcel number to reduce the land taken into trust to 40 acres. 78 Fed. Reg. 114 (2013). DOI's own regulations require that it closely examine title to proposed trust acquisition. 25 CFR Part151.13; 2002 Enterprise Application at 9 ("The land description in the deed and title evidence must be identical"). DOI guidance, which effectively has the force of law, requires that the Office of Indian Gaming "will review the description to verify that the description accurately describes the subject property, and that it is consistent throughout the application." Fee-to-Trust Handbook at 65 (2011).

In addition to not adequately examining the land itself or the impacts of acquiring it for Enterprise, the Department erred in finding that Enterprise *needed* YCE's land. The Enterprise Rancheria originally consisted of two 40-acre parcels in Butte County that were purchased in 1915. In 1964, tribal members agreed to sell one of the parcels of land, Enterprise No. 2, to the State of California for inundation by Lake Oroville. The other parcel, Enterprise No. 1, over which the tribal government of the Enterprise Rancheria has jurisdiction, remains in trust. *Robert Edwards v. Pacific Regional Director, Bureau of Indian Affairs,* 45 IBIA 42 (2007).

Having been in trust prior to October 17, 1988, Enterprise No. 1 constitutes "Indian Lands" that are eligible for gaming under IGRA.

DOI's regulations require that the Department find that a tribe has a need for land, not just the desire for it. 25 CFR Part 151.10(b); 2012 ROD at 44. Nor could DOI find such a need. According to the EIS funded by Enterprise's own gaming developer, a casino on its existing reservation, Enterprise No. 1, could turn a profit from which the tribe's several hundred members entitled to full benefits would receive. *E.g.*, EIS at 4.7-17 to 4.7-28; Appendix M at 130.

Nonetheless, the 2012 Record of Decision approving the application to have the YCE parcel taken into trust found that Enterprise needed more land. 2012 ROD at 44. Assistant Secretary Echo Hawk the year before had found that development of Enterprise No. 1 would be "exceedingly difficult" and would "result in minimal or no revenue for the Tribe." 2011 ROD at 47. The report on economic impacts, however, found that an on-reservation casino would have total annual revenues of nearly $20,000,000. Appendix M at 130; EIS at 2.47. While that pales in comparison to an estimated total revenue at the YCE parcel of $160,000,000, it is not "minimal" revenue. Moreover, the ROD failed to consider the development potential of Enterprise-owned fee land in Butte County, much closer to Enterprise's existing gaming-eligible trust land base.

Although the costs of construction of an on-reservation casino were estimated to be higher in proportion to total revenues – based solely on YCE's figures and without explanation – the cost of debt and revenue sharing with its developer and local communities – such as the $5,000,000 annual payment in lieu of property taxes to the County of Yuba – would not be present. *Memorandum of Understanding between the Estom Yumeka Maidu Tribe, Enterprise Rancheria and the County of Yuba* (December 17, 2002); Appendix M at 46. The estimated costs to Enterprise of an off-reservation casino were $150,000,000 in 2006. *Id*. 11. For the sake of "accuracy," however, GMA excluded from that figure the cost of Enterprise purchasing the casino site from YCE at the above-market price of $7,000,000 or the costs and 13% interest Enterprise agreed to pay for the up to $85,000,000 projected cost in 2002 (to be borrowed from YCE and other lenders to finance its fee-to-trust application, purchase of YCE's land, pay for construction, and a management fee of 30% of the *net* revenues of the off-reservation casino). *E.g.*, 2002 Enterprise Application at 16, 99 & 107. Since Enterprise already beneficially owned its existing reservation, there would be no cost to purchase land for an on-reservation casino.

Moreover, Enterprise already owns more than 80 acres of land in fee-simple in Butte County, which is more than twice the size of Enterprise No. 2, which it agreed to sell to California in 1964. Enterprise Properties in Context; *see also*, http://goo.gl/maps/LhUq7. Since the Enterprise tribal government reconstituted itself in 1994 it has received millions of dollars in federal funding to support government programs, including funding to acquire land for tribal housing. *E.g.*, 62 Fed. Reg. 52348 (1997) (notice of award of $2.3 Million to Enterprise for Indian housing). It also has received millions of dollars from the Revenue Sharing Trust Fund established under California's 1999 Class III gaming compacts. Despite its claims to be a Yuba County tribe, it has never purchased land in Yuba County. North State Research & Consulting Services, Research Report (March 21, 2013) (listing Enterprise Rancheria properties in the public records of Butte County); North State Research & Consulting Services, Research Report

(April 10, 2013) (finding no Enterprise Rancheria properties in the public records of Yuba or Sutter Counties).

Notably, Enterprise's lands include a 63-acre parcel outside of Oroville, 2009 Enterprise Application at 4, and a 16-acre parcel, which already includes a hotel, between Enterprise No. 1 and the former Enterprise No. 2. Research Report (March 21, 2013). It also owns the office building in Oroville housing the tribal government's office, and several residential properties in Oroville. *Id.* Enterprise has never sought to have any of those properties it owns in Butte County taken into trust by DOI. 2009 Enterprise Application at 4. The only trust land it is interested in is the Yuba County property owned by its casino backer, YCE.

Enterprise No. 1 may not be ideal for gaming, but scores of other California Indian tribes find themselves in a similar or worse situation with either land that could not support a casino or without land at all. Such tribes, such as Colusa, have incurred heavy debt burdens to finance casinos on their less-than-ideal lands and to develop a customer base outside of their small, local communities. Some of those tribes with remote reservations, such as Santa Ysabel, which recently unsuccessfully attempted to declare bankruptcy, have come close to failing, but only Enterprise has been allowed by DOI to make a developer-backed foray into other tribes' traditional territories for the sole purpose of gaining access to more lucrative markets, deliberately cannibalizing the marginal markets of other tribes in the process. If a developer's willingness to finance a casino and a tribe's desire for greater profit is the standard by which to judge Section 20 two-part determinations, there are scores of California tribes just as, or more deserving than Enterprise of being allowed to move to more lucrative locations; this would include some of the State's largest tribes.

In both northern and southern California, there are numerous tribes – large and small – with small, remote and/or rugged gaming-eligible trust land bases. Those tribes include, but are not limited to, the Covelo Indian Community (Mendocino County), the Quartz Valley Rancheria (Siskiyou County), the Cold Springs Rancheria (Fresno County), Grindstone Rancheria (Glenn County), Cortina Rancheria (Colusa County), Ramona Reservation (Riverside County), Santa Rosa Reservation (Riverside County), Manzanita Reservation (San Diego County), Los Coyotes Reservation (San Diego County), Ewiiaapaayp Reservation (San Diego County), Jamul Reservation (San Diego County), La Jolla Reservation (San Diego County), Hoopa Valley Reservation (Humboldt County), Yurok Reservation (Humboldt and Del Norte Counties), Lower Lake Rancheria (Lake County), El Em (Sulphur Bank) Rancheria (Lake County), Ft. Bidwell Reservation (Modoc County), Benton Paiute Reservation (Inyo County), Inaja-Cosmit Reservation (San Diego County), Bridgeport Indian Colony (Alpine County), Big Sandy Rancheria (Madera County), Table Mountain Rancheria (Fresno County), Bear River Rancheria (Humboldt County), Mooretown Rancheria (Butte County), Cahuilla Reservation (Riverside County), Chemehuevi Reservation), Berry Creek Rancheria (Butte County), and San Pasqual Reservation, among others. In addition, a number of tribes that were unterminated under the Tillie Hardwick decision still do not have trust lands, but are making efforts to acquire such lands in the vicinity of their former lands (*e.g.*, Chico Rancheria, Cloverdale Rancheria, Scotts Valley Rancheria).

In approving off-reservation gaming by Enterprise, DOI relied upon the fiction that the YCE parcel is within the tribe's traditional territory and that it was "strongly supported" by the local community. 2011 ROD at 63-64. Although Enterprise, a Maidu tribe, claims that Yuba and Sutter Counties are its aboriginal territory, that claim is easily debunked by reviewing the authoritative treatises on the subject of California Indian tribes. Marcos Guerrero, Affidavit (December 24, 2012). It has no more claim to land in Yuba County than its fellow Butte County Maidu tribes, Mooretown and Berry Creek Rancherias, whose reservations are near Enterprise No. 1. *See* http://goo.gl/maps/LhUq7. Enterprise tacitly admitted that fact in its application for the two-part determination in which it noted that it provides services in Yuba and Sutter Counties in cooperation with the other two Maidu tribes in Butte County. 2009 Enterprise Application at 5. Despite the assertions of historic ties to Yuba County, only about one-half dozen tribal members of any class lived in Yuba County in 2002-2009. *Id.* at 3; 2002 Enterprise Application at 3 (approximately 10% of its 500 members lived in Yuba and Sutter Counties).

The sole evidence for Enterprise's claims to aboriginal territory in Yuba County is a single decision by the California Native American Heritage Commission, which found Enterprise to be a most likely descendant of specific remains found during excavation for a levee on the Feather River. That finding was contested by other Feather River Tribes. The fact that the Army Corps of Engineers is participating in that project allowed Enterprise to claim that both the state and federal governments support its claims. 2012 ROD at 46. At some point, the claim was vastly expanded from a portion of the bank of the Feather River to include all of Yuba and Sutter Counties without any explanation. *See* 2009 Application at 13; 2011 ROD at 46; *But see*, Guerrero Affidavit.

Although backed by several local governments that entered into potentially lucrative side agreements with Enterprise, the project was rejected by the voters of Yuba County in a 2005 ballot initiative by a clearer margin than many presidential elections. Yuba County Board of Supervisors' Letter to BIA (March 17, 2009). The voters had earlier approved the use of the land for a racetrack, a very different and periodic land use that would have been subject to local control and taxation. Crucially, however, it would not have been as lucrative for YCE. Notwithstanding popular opposition, DOI found strong local support for the casino based on the actions of local elected officials, especially the Yuba County Supervisors, who had acted prior to the ballot initiative. 2011 ROD at 47.

In order to gain the support of DOI and the State of California, Enterprise has relied upon ambiguity to make it appear that a Yuba County casino will benefit a large number of impoverished local tribal members. While their poverty is probably, and lamentably, real, the direct benefits of a casino will not flow to that many tribal members. When Enterprise first organized as a tribe in 1994, its General Council – all voting members of the tribe – amounted to fewer than 20 people. Letter from Enterprise Rancheria to BIA (1994). Membership was initially limited to the direct descendants of the occupants of Enterprise Nos. 1 and 2, and thus necessarily originated in Butte County. Enterprise adopted a constitution to admit a literal second class of citizens: persons who are not lineally descended from the original occupants of Enterprise Nos. 1 and 2, but who could demonstrate Indian descent from anywhere in the Feather River drainage. By calling them "members," the tribe thus enables them to access federal programs and services available to Indians. However, this second class of members cannot vote,

cannot hold tribal office, and *are not eligible to receive any tribal benefits* – such as *per capita* distributions of casino revenues. Thus, the huge casino that Enterprise proposes to build actually will benefit far fewer individuals than Enterprise has claimed. Enterprise Constitution, Article III, Membership.

Colusa does not oppose any other tribe receiving the benefits of tribal government gaming. Our Tribe is a willing contributor to the California Indian Gaming Special Distribution Fund and Revenue Sharing Trust Fund, from which non-gaming tribes, such as the Enterprise and North Fork Rancherias, receive $1.1 Million per year in completely unrestricted funds. If Enterprise were seeking to conduct Class III gaming on or close to its existing gaming-eligible trust lands, we would not oppose it. Similarly, we strongly support the Department of the Interior ("DOI") accepting land into federal trust for tribes whose original trust lands were taken – not voluntarily sold – or lost through termination, or if a tribe needs more land for housing, cultural purposes or even economic development if that development would not impoverish our own Tribe. In most cases, that sort of trust land acquisition is unlikely to have any significant impact on other tribes, unless the newly-acquired land is within another tribe's traditional territory.

Our opposition to DOI's off-reservation gaming acquisitions is not based on a lack of sympathy for the history of other Indian tribes that must continue to deal with the legacy of genocide, displacement and failed attempts at forced assimilation that characterized so much of United States and California's history. The fact is that every Indian tribe – ours included – has to deal with that legacy every day. We oppose acquisition of off-reservation land in trust for gaming purposes for Enterprise because if historic mistreatment of Indian tribes and their members justifies allowing Enterprise to leapfrog its fellow tribes to build a casino closer to the nearest major market than neighboring tribes, then that justification applies equally to every other tribe that is not located near either a major highway and/or a large city. That would include most tribes in the country – including our own Tribe.

But that is not what Congress had in mind when it enacted the Indian Gaming Regulatory Act ("IGRA") in 1988. Nor is it what the people of California voted for in 1998 when they passed Proposition 5 and again in 2000 when they passed Proposition 1a. Voters nationwide and within California do not support "reservation-shopping" by tribes. If Congress or the voters of the State of California believed that would be the outcome, neither IGRA nor the California Propositions that enabled tribal government gaming would have passed. Moreover, once tribes become viewed by the public as nothing more than fronts for casino developers, the public likely will cease to view tribes as governments exercising authority over territory, with devastating consequences for all tribes.

We oppose the DOI's current off-reservation gaming policy because it threatens to destroy much of the progress that our Tribe and others have made. Our reservation is located in rural Colusa County. We started in gaming with a modest high-stakes bingo hall 30 years ago, and we slowly grew our modest casino as revenues and the market permitted. Our casino generates most of the revenues that our Tribe has used to provide programs and services to our members that no other unit of government had been providing – services such as medical care,

education, nutrition, public safety, environmental protection, recreation and other services. We also have used – and pledged – casino revenues to diversify our tribal economy.

As the result of our casino revenues and the economic development it has supported, our Tribe is now one of the largest employers in Colusa County, and our Tribe is an important contributor both to local governments in Colusa County and to the economy of the area as a whole. The development of our Tribe's economy also has resulted in our Tribe becoming a respected agricultural business locally and potentially globally. All of that stands to be lost due to a federal agency's failure to apply sufficient skepticism to the claims of a gaming developer who stands to make tens of millions of dollars annually from tribal gaming and hundreds of millions over the seven years of his development and management contracts with Enterprise.

We don't think IGRA needs to be changed. We do think that the DOI and BIA need to change the way two-part determinations are being made. Otherwise, all that we – and other tribes in our area – have worked so hard and long to accomplish will be lost.

Thank you for the opportunity to share my Tribe's views with the Subcommittee.

Sincerely,

Hazel Longmire
Vice-Chairperson
Colusa Indian Community Council