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MEMORANDUM

To: Dave McCracken, New 49'er Association
From: James L. Buchal
Date: May 2, 2013
Re: Developments in San Bernardino County Coordinated Cases.

On May 1st Judge Ochoa heard arguments for and against summary judgment on the federal preemption issue. He appeared to be familiar with the pleadings and arguments, and made some statements challenging the State that appeared helpful. However, at the end of the argument, he announced that he wanted to see all counsel in chambers. There he announced that he really did not know how he was going to decide, and that it would be better for all of us if we could settle the case.

I explained that the opposing forces had no incentive whatsoever to bargain unless and until the Judge took the "just shut them down" option off the table, and that it made a lot more sense to pursue settlement in a context where permits had to be issued, with the negotiations concerning the contents of the permits. I even explained that we could have no faith in any settlement, because the Tribe could immediately turn around and get its puppets in the Legislature to overturn the settlement, and that only the Supremacy Clause and the Judge could protect us.

But the Tribe and the State played to the Judge and expressed their willingness to compromise, and how much more efficient it would be to delay the case for a few months (just enough to get through the summer season) to work on this, etc. I pointed out that this was the same thing they had been doing for ten years and that justice delayed is justice denied, but the Judge finally shut me down and told me I was being too emotional.

Judge Ochoa has set a mandatory settlement conference pursuant to Rule 3.1380 of the California Rules of Court on June 24, 2014, and will make an attempt to personally settle the case. To make matters worse, you are required to attend, but can attend by phone. I will provide further information, including a copy of the Court's order, and the telephone information, as soon as it becomes available.

Sincerely,



James L. Buchal