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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

DONALD GOSNEY, an individual,
Petitioner,

v.

STEPHEN L. WEIR, Clerk-Recorder of the
County of Contra Costa; and DIANE
HOLMES, City Clerk of the City of Richmond,
Respondent.

JOAN GARRETT, an individual; JEFF
RITTERMAN, an individual; ANDRÉS
SOTO, an individual; GAYLE McLAUGHLIN,
an individual; and KENNETH DAVIS, an
individual,
Real Parties in Interest.

CASE NO. N10-1254

**DECLARATION OF TOM BUTT IN
SUPPORT OF OPPOSITION TO
PETITION FOR WRIT OF MANDATE**

JUDGE: Barry Baskin
DATE: August 30, 2010
TIME: 8:30 a.m.
DEPT: 7

PETITION FILED: August 23, 2010

I, Tom Butt, declare:

1. For identification purposes only, I am a member of the Richmond City Council and have served on the City Council since 1995. I am not a party to this action, and I am making this declaration as an individual not representing the Richmond City Council. I am over the age of 18 years and submit this declaration based on my personal knowledge.

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1 2. During 2010, I have been personally involved in direct negotiations between the City of
2 Richmond ("City") and Upstream Point Molate LLC ("Upstream") concerning changes to the
3 Land Development Agreement approved by the City on November 9, 2004 (LDA").

4 3. Both the City and Upstream agree that the LDA has to be extensively amended for many
5 reasons, including the fact that the originally designated guarantor and source of project
6 financing has changed from Harrah's to Yocha Dehe Wintun Nation. The City Council has
7 directed city staff to negotiate further changes to the LDA, including to the local hire provisions
8 in Exhibits E, a proposed agreement between the City and the Guideville Band of Pomo Indians
9 ("Tribe") and F, the draft First Source Agreement. Neither Exhibit E nor Exhibit F to the LDA
10 has been executed by the City or Tribe, ratified by the Tribal council, or approved by the
11 Secretary of Interior.

12 4. I have directly participated in the negotiations with Upstream concerning the local hire
13 provisions. Upstream and the Tribe were represented by Jim Levine, John Salmon and Michael
14 Derry. The hiring agreements contain a number of qualifications and exceptions to hiring
15 Richmond workers. When I have suggested in the negotiations changes to Exhibit E and F to
16 strengthen the hiring requirements to binding commitments and to provide stronger and quicker
17 remedies if the hiring objectives are not realized, Upstream has refused to consider substantive
18 changes. Upstream and the Tribe have taken the position that given the need to comply with
19 other laws, the need to protect tribal sovereignty, the need for workers that qualify for the jobs
20 and other caveats, the agreements require only their reasonable efforts. The agreements do not
21 provide any assurance that the hiring objectives have to be achieved. There is no assurance that
22 Richmond workers will be hired. There is no assurance that any significant number of jobs will
23 be created for Richmond residents. Upstream's claim that the casino will hire 33% of
24 "operational, non-management" workers from Richmond is untrustworthy. The draft hiring
25 agreements contain an objective, not a guarantee. Paragraph 5.4 of Exhibit E states:

26 The Tribe hereby covenants and agrees that, for initial hires it will hire at least one
27 third of its operational, non-management positions for the Casino and Casino
28 Hotel from a pool of Richmond residents who otherwise meet all of the
qualifications of employment established by the Tribe and who are referred to the
Tribe by Richmond Works (a program operated by the City) subject to the

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1 availability of a sufficient pool of qualified applicants and in accordance with
2 applicable federal and state law. Nothing herein shall require the Tribe to maintain
3 a workforce with any specified number of Richmond residents or to fill any
4 positions vacated by resignation, retirement or termination with Richmond
5 residents.

6 I was concerned that there were too many ways for Upstream to escape responsibility for
7 Richmond hires. They could argue that insufficient referrals were provided by Richmond Works
8 or that those referred were insufficiently qualified according to tribal controlled standards. They
9 could argue that even if they hired Richmond residents, they are not required to “maintain a
10 workforce with any specified number of Richmond residents or to fill any positions vacated by
11 resignation, retirement or termination with Richmond residents.” I and others wanted to tighten
12 the language to make Upstream fully responsible for hiring and maintaining a Richmond
13 workforce of 33%, but Upstream has refused to accept this modification. Neither does the draft
14 First Source Agreement actually require any specific percentage of Richmond hires (Exhibit F). It
15 only requires “reasonable efforts,” which are not defined. The Tribe could defend its failure to
16 hire target percentages of Richmond residents by claiming that an insufficient number of
17 applicants were referred by other agencies or that referrals were not sufficiently qualified, both
18 very subjective conclusions.

19 5. Six years after the LDA was signed, the casino also has yet to clear approvals required to
20 commence construction. In fact, one of the now recognized fatal flaws in the LDA is that it does
21 not require Upstream or the Tribe to construct or operate anything or create any jobs at all. It is
22 recognized by both parties that under the current LDA, Upstream could freely sell the property to
23 a third party who would have no requirements under the LDA whatsoever. Upstream has yet to
24 close escrow and purchase the property from the City. The Secretary of Interior has not said if he
25 will take the land into trust for the Tribe. The Secretary of Interior has yet to make a finding that
26 the land is eligible for a casino as “restored lands” or under another exception. There is no
27 gaining compact between the Tribe and the State. The Bureau of Indian Affairs has not approved
28 an EIS under the National Environmental Policy Act. The City has not approved an EIR under
CEQA. Even the modest and insubstantial modifications to hiring requirements for Richmond
residents proposed by Upstream have never been incorporated into an LDA amendment or or

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1 other binding agreement. Instead of coming to grips with the issue, Upstream pressed for a
2 substantial extension of the LDA that was granted by a narrow 4-3 majority of the City Council
3 until April of 2011. I voted for the project proposed by Upstream in 2004, but due to Upstream's
4 failure to follow through on many commitments, and due to problems with the project as it has
5 unfolded, I am now opposed.

6 6. Since 2006, the LDA has been amended by the City and Upstream six times. I do not
7 know if the sale of the land from the City to Upstream will ever close, and if the sale ever does
8 close, by then how many more amendments to the LDA and Exhibit E will be made. I do not
9 know at this time what the final local hire agreements may provide.

10 7. Based on my knowledge of the bargaining process and the positions taken by the parties,
11 the claims that the jobs for Richmond workers are not guaranteed and that the casino jobs will be
12 low wage are not only accurate, but fair political arguments that should not be excised. There is
13 a long running public debate about the casino, and the ballot arguments for the advisory vote
14 frame two clearly opposing points of view. In view of the facts, the arguments by the casino
15 developers and advocates in their ballot arguments that the "existing agreements with the City
16 would require that 40% of employees must come from Richmond, and that the "First Source
17 Agreement" would guarantee that Richmond residents are first-sourced" for jobs are both
18 misleading and inaccurate. According to Upstream, the agreements state an objective, not a
19 "requirement" or guarantee of jobs. Moreover, being "first sourced" does not mean that
20 Richmond residents will actually be hired.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing facts are true and correct. Executed this 29th day of August, 2010, at Richmond,
23 California.

24 
25 _____
26 Tom Butt, Richmond City Councilman

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