



**COLUSA INDIAN COMMUNITY COUNCIL
CACHIL DEHE BAND OF WINTUN INDIANS**

RESOLUTION # 04-19-99-01

PROTOCOL BETWEEN THE COLUSA INDIAN COMMUNITY COUNCIL AND THE COUNTY OF COLUSA FOR THE SERVICE OF PROCESS ON THE COLUSA INDIAN RESERVATION AND RESPONSES TO SUBPOENAS DUCES TECUM IN CRIMINAL PROSECUTIONS.

RECITALS

- WHEREAS, the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community (Tribe) in Colusa County, California is the beneficiary of the lands of the Colusa Indian Reservation (Reservation) in Colusa County, California, and the Secretary of the Interior recognizes the Colusa Indian Community Council (Community Council) as the Tribal governing body that exercises jurisdiction over the people and territory of the Reservation under a Constitution ratified by the Colusa Indian Community and approved by the Secretary of the Interior pursuant to the Indian Reorganization Act of 1934;
- WHEREAS, the County of Colusa (County) is duly organized under the Constitution and laws of the State of California (State) as a subdivision of the State, and as such exercises such jurisdiction over the lands and people of the Reservation as has been conferred upon the State of California by the United States;
- WHEREAS, under federal common law the Tribe is immune to unconsented suit and is not subject to process issued by the courts of the State of California, and thus has not designated any person as generally authorized to accept service of process on the Tribe's behalf;
- WHEREAS, the County has, in the past, encountered difficulties and uncertainties in effecting service of civil process on members and employees of the Tribe and on the Tribe itself, and in obtaining from the Tribe, through service of subpoenas duces tecum, evidence belonging to the Tribe for use in criminal prosecutions, with the result that efforts to effect service of process and compel production of evidence occasionally have been ineffective and/or have been disruptive to the orderly conduct of the Tribe's business, and efforts to protect the Tribe and residents of the Reservation through the enforcement of applicable criminal laws have been hampered; and

WHEREAS, to maximize cooperation between the Tribe and the County and to minimize confusion and disruption that can result from attempts to serve civil process to obtain evidence that do not acknowledge the legitimate interests and authority of both the Tribe and the County, the Tribe and the County desire to establish a protocol setting forth the procedures to be followed by the County when civil process is to be served on the Reservation or when evidence is to be sought from the Tribe in connection with enforcement of the criminal laws of the State,

NOW, THEREFORE, the Tribe and the County adopt the following protocol:

1. Service of civil process on persons living on the Reservation:

If a County agency, including the Colusa County Sheriff's Department (COS) or the District Attorney (DA), desires to serve a summons, writ, subpoena or other civil process on any person living in a dwelling on the Reservation, the County agency shall first contact the Tribal chairperson or, if the Chairperson is unavailable, another elected Tribal official through the Tribe's office and request the Tribe to contact the person to be served and arrange to meet the serving officer at the Tribal office or other convenient location for the purpose of effecting service. Nothing herein shall be construed to authorize any Tribal official to accept service on behalf of any Tribal member or other person living on the Reservation. If the Tribal official is unwilling or unable to make such arrangements, or if the County's agent reasonably believes that exigent circumstances require immediate service without prior notice to the Tribe, the County's agent may proceed to attempt to serve the person at his/her residence on the Reservation, and thereafter shall notify the Tribal Chairperson of any such attempt and the results thereof. Nothing herein shall require notification to the Tribe if, in the reasonable judgement of the County's agent, such notification would compromise or interfere with a criminal investigation, or would likely result in the flight of the person to be served.

2. Service of process on Tribal employees:

A. Service on persons employed in the Tribal office:

A County agent seeking to serve any civil process, subpoena or writ on any person employed in the Tribal office shall seek to effect such service at the person's workplace by coming to the Tribal office and requesting the receptionist in the Tribal office to notify the employee that the agent is there to serve process upon the person, and the receptionist shall summon the employee to the reception area to receive the process from the County's agent.

B. Service on persons employed in the Tribal gaming facility.

A County agent seeking to serve any civil process, subpoena or writ on any person employed in the Tribal gaming facility at the employee's workplace shall notify the Tribal Gaming Commission of the desire to effect such service. The Tribal Gaming Commission shall ascertain when the employee is next scheduled to work, shall so inform the County's agent and the County's agent shall request the Tribal Gaming Commission to make the employee available for

service at a time when the employee is scheduled to work. The Gaming Commission shall make a good faith effort to arrange for the employee to meet with the County's agent at an inconspicuous location at the gaming facility for the purpose of delivery of process to the employee. Unless the Tribal Gaming Commission fails or refuses to cooperate with the County's agent in arranging for the employee to meet with the County's agent to accept delivery of process, or unless the employee fails or refuses to obey the Tribal Gaming Commission's instruction to appear to accept delivery of the process, the County's agent shall not deliver process to an employee of the Tribal gaming facility while the employee is engaged in the performance of his/her duties or in a manner that will be visible to the public or disruptive of normal operations in the gaming facility.

3. Service of civil process on the Tribe:

Although the Tribe has not conferred upon any person general authority to accept service of process addressed to the Tribe or its government, the Tribe recognizes that the County's agents often are obligated to attempt to serve such process on the Tribe or its government even if the Tribe or its government may not be subject to such process, and the Tribe has no desire to obstruct or complicate County agents' performance of their duties. Accordingly, if a County agent desires to attempt to serve civil process on the Tribe or its government, the agent shall deliver such process to the receptionist in the Tribal office during normal business hours; acceptance of delivery of any civil process, writ or subpoena shall not constitute acceptance of service of process on behalf of the Tribe unless the Tribe specifically has consented in an authorized writing to the jurisdiction of the court issuing such process, subpoena or writ.

4. Service of subpoenas on the Tribe for production of evidence in connection with prosecution of crimes committed on the premises of the Tribal gaming facility:

The County acknowledges that the Tribe itself is not subject to the jurisdiction of the courts of the State of California, and that the County, as a subdivision of the State, does not have jurisdiction to enforce the State's gambling laws on the Reservation unless such jurisdiction has been conferred in a Tribal-State compact that has been approved by the Secretary of the Interior and is in effect. The Tribe acknowledges that although the Tribal Gaming Commission is the Tribal government agency with primary authority for regulating gaming on the Tribe's Reservation, criminal activities that occur on the premises of the Tribe's gaming facility (other than underlying gaming activities) remain subject to the criminal laws of the State, and the Tribe desires that the State's criminal laws be fairly and effectively enforced on the Reservation so as to protect the health, safety and welfare of Reservation residents, patrons and employees of the Tribal gaming facility, as well as the Tribe's assets.

Accordingly, if the District Attorney desires to obtain surveillance videotapes or other records from the Tribe for use in prosecuting crimes committed on the Reservation, the District Attorney may obtain such evidence by serving upon the Tribal Gaming Commission a subpoena therefor, and the Tribal Gaming Commission shall allow the District Attorney or investigators acting at the District Attorney's direction to copy such evidence under the supervision of the Tribal Gaming Commission. At the District Attorney's request, the Tribal Gaming Commission shall certify the authenticity and accuracy of copies of any materials made available for inspection and copying and

a representative of the Tribal Gaming Commission shall, upon request and if necessary, appear in court and testify thereto. Under no circumstances shall the Tribal Gaming Commission be required to surrender possession of the original of any surveillance videotape or other regulatory record. Notwithstanding the foregoing, it is the parties' intent to comply with the requirements of Evidence Code 1520, et seq.

To assist County law enforcement officers in the exercise of the County's jurisdiction to enforce the criminal laws of the State on the Reservation, the Tribal Gaming Commission shall provide the District Attorney with an organization chart illustrating the Tribe's regulatory framework and the supervisory chain of command within the Tribal gaming facility.

5. Resolution of jurisdictional disputes:

The Tribe and the County acknowledge that the body of federal law that defines the parameters of State and Tribal jurisdiction over persons and transactions on the Reservation is complex and dynamic, and that from time to time disputes may arise between the County and the Tribe over the extent of each party's jurisdiction and authority, or the manner in which acknowledged jurisdiction or authority is being exercised. In the interest of enhancing the mutually-respectful government-to-government relationship between the Tribe and the County, the parties agree that if either party has a complaint or objection about the manner in which the other party is exercising or asserting jurisdiction on the Reservation, that party will inform the other of the complaint or objection, and the parties promptly will meet and confer about the complaint or objection before the complaining or objecting party initiates legal proceedings or takes other enforcement action; provided, that nothing herein shall prevent either party from initiating legal proceedings or taking other enforcement action if a delay in doing so would create an imminent threat of harm to public health or safety.

6. Tribal response to Wage Garnishment Orders in Non-Support Cases:

Because the Tribe is a sovereign government that has not submitted to the jurisdiction of the courts of the State, the Tribe is not legally obligated to comply with writs of garnishment issued by State courts in proceedings to enforce parental obligations to pay child support. Nonetheless, the Tribe's policy is that parents should support their children to the extent of their ability, and the Tribe is willing to cooperate with the District Attorney in enforcing the child support obligations of the Tribe's gaming employees to the extent and in a manner which does not infringe upon the Tribe's sovereignty.

Accordingly, when the District Attorney has obtained a wage garnishment order against a person employed at the Tribe's gaming facility and would like to obtain the Tribe's cooperation in enforcing the employee's obligation to support his/her children, the District Attorney shall cause an investigator from his office to deliver that order to the Tribal Gaming Commission. Upon receipt of such an order, the Tribal Gaming Commission will contact the employee, encourage the employee to fulfill his/her legal obligations as described in the order and advise the employee that a willful failure to fulfill those obligations could negatively affect the employee's suitability for licensure by the Tribal Gaming Commission.

The Colusa Indian Community Council, at a regularly held Council meeting on April 19, 1999, voted to approve this protocol by resolution. The vote was 14 FOR 0 OPPOSE 0 ABSTAIN.

CERTIFICATION

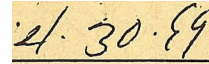
This resolution has been authorized through the actions of the Colusa Indian Community Council at a regular meeting held April 19, 1999, at which a quorum was present. This resolution has not been rescinded or amended in any way.

SIGNED: :



Wayne R. Mitchum, Chairman

DATE:



ATTEST: _____

Lavern T. Pina, Secretary/Treasurer