



Ninth Circuit Holds National Indian Gaming Commission Not Required to Conduct NEPA Review Before Approving Casino Gaming Ordinance

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In *Jamul Action Committee v. Chaudhuri*, the United States Court of Appeals for the Ninth Circuit held that the National Indian Gaming Commission (Commission) did not violate the National Environmental Policy Act (NEPA) when it approved the Jamul Indian Village's gaming ordinance without first conducting any environmental review under NEPA. The decision provides guidance on when an irreconcilable and fundamental conflict exists between NEPA and other substantive statutes such that an agency need not complete an environmental impact statement (EIS) even in the presence of a major federal action.

The case before the Ninth Circuit involved a challenge to the Commission's approval of a gaming ordinance for an Indian gaming casino in Jamul, California. A sub-group of Jamul Indian Village tribal members, including the Jamul Action Committee, the Jamul Community Church, and four residents of rural Jamul (JAC), opposed the casino. They contended that the Commission violated NEPA when it approved the Tribe's gaming ordinance without first conducting any NEPA review. The district court denied JAC's petition for a writ of mandamus under the Administrative Procedure Act, holding that the Commission's approval of the gaming ordinance was not a major federal action within the meaning of NEPA. The Ninth Circuit affirmed the decision on different grounds. It found that, while the Commission's approval of the gaming ordinance was a major federal action, and that action was not subject to an exemption under NEPA, the Commission was not required to comply with NEPA because there was an irreconcilable statutory conflict between NEPA and the Indian Gaming Regulatory Act (IGRA).

In the decision, the Ninth Circuit noted that Congress, through the IGRA, imposed an unyielding statutory deadline for agency action on the proposed gaming ordinance by requiring the Commission to approve the ordinance or resolution no later than 90 days after the date it was submitted. Moreover, the act triggering the IGRA's mandatory deadline was not within the Commission's control because it is the tribe's submission of the proposed ordinance that triggered the statutory countdown. Finally, a gaming ordinance automatically takes effect after 90 days with or without Commission action. The Ninth Circuit held that there is an irreconcilable and fundamental statutory conflict between the IGRA and NEPA because there was no question that it would be impossible for the Commission to prepare an EIS in the 90 days it had to act on the proposed gaming ordinance.

In so holding, the court noted that it has been hesitant to find a statutory conflict between NEPA and other federal statutory provisions. It distinguished this case with situations where an agency, and not Congress, imposes a short time frame for agency action or where the triggering act for the short statutory time period is within the agency's control.

While uncommon, the courts have applied the NEPA statutory conflict exemption in several other circumstances. *E.g.*, *Douglas County v. Babbitt*, 204 F.3d 920 (9th Cir. 1999) (Endangered Species Act provisions concerning designation of critical habitat displaced NEPA); *Merrill v. Thomas*, 807 F.2d 776 (9th Cir. 1986) (NEPA does not apply to registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act).