



October 13, 2009

Mr. Larry Echo Hawk
Assistant Secretary-Indian Affairs
1849 C Street, NW
Room 4160-MIB
Washington, DC 20240

Dear Assistant Secretary Echo Hawk

I wanted to write and again say thank you for taking time out of your busy schedule to meet with me and my tribal members on September 30th. I know you are extremely busy and I appreciate the time you gave to us.

The Tejon Tribe is anxiously waiting for your reply to our request for confirmation of our status as a tribe. I want to kindly remind you that November 1st is the day of our annual cemetery clean up and a lot of us will be together for that and it would be a good time for us to share in any news you have to give us. I have asked our legal team to write a document that I could provide you in order for me to show you that our tribal history is much more than those of the tribes that have been put back on the list of federally recognized tribes. I hope that if you have any questions regarding this document that I'm sending to you, that you please call any of my attorneys, Arlinda Locklear or Heather Sibbison,

There is so many things I want to write to you about our tribe in order to share with you how our government by omitting us off the federal recognized list, impacts my tribal members on a daily basis. I as a tribal leader live with this every day and it eats away at me every single minute of every single day. If you have doubts about the history of our tribe, I say to you, read the summary in the original request we submitted in June of 2006. You will clearly see that our history is not something that we made up, it is not something we stretched in order to fill holes in our history, it is all there, over and over.

Sincerely,

Kathryn Montes Morgan
Tejon Indian Tribe

cc: Pilar Thomas

THE TEJON INDIAN TRIBE

MEMORANDUM SUMMARIZING CASE FOR PLACEMENT ON THE LIST OF FEDERALLY RECGNIZED TRIBES

October 13, 2009

I. OVERVIEW

In 2006, the Tejon Indian Tribe (the Tribe) requested that the Department of the Interior correct its list of tribal entities recognized as eligible to receive services from the United States Bureau of Indian Affairs to reflect the Department's historic and continuing acknowledgment of the Tribe. The Tribe's Request explained that the Department maintains authority to confirm the federal acknowledgment of Indian tribes pursuant to 25 U.S.C. § 2. Within the past fourteen years, the Department has exercised that authority to confirm the status of four tribes – the Ione Band of Miwok, the Lower Lake Rancheria, the King Salmon Tribe and the Shoonaq' Tribe of Kodiak. A common thread among Tejon and these tribes is that the Departmental action confirmed a continuing relationship, rather than acknowledging the Tribe in the first instance. Further, it is clear that the Tejon Indian Tribe is not subject to the administrative Federal Acknowledgment Process since the Tribe, already acknowledged by Interior, falls outside the scope of those regulations. *See* 25 C.F.R. § 83.3(a) ("This part applies only to those American Indian groups indigenous to the continental United States *which are not currently acknowledged as Indian tribes by the Department*") (emphasis added).

The Tejon Indian Tribe's 2006 Request included 72 exhibits consisting of the United States' own records that document the continuous acknowledgment of the Tribe. In those records, Interior and the Department of Justice repeatedly reaffirm that the Tejon Indian Tribe descends from the same Tribe recognized by an 1851 Treaty. Further, the records reflect clear federal acknowledgment during the lifetime of many members still alive today. The Tribe's 2006 Request explained that of the current membership, 25% of its members were alive in 1962 when Interior still held a reservation for the Tribe (Interior returned that reservation to the public domain later that year because BIA found the land to be unuseable). Further, over 20% of the Tribe's members alive today either were born or resided within the Tribe's aboriginal village area (encompassed within the privately owned Tejon Ranch) at some point in their lives.

As summarized below, the Tejon Indian Tribe has been acknowledged through treaty negotiations, by the federal courts (including the Supreme Court), and by continuous assistance and oversight by the Bureau of Indian Affairs for more than one hundred years, up through the lives of current members. At no time has the Tribe been terminated by Congressional action and at no time has the Department of the Interior asserted that the Tribe's status has been terminated or lapsed.

Omission of the Tejon Indian Tribe from the list of federally recognized tribes clearly is the result of administrative error. Interior began its initial preparation of its first list of recognized tribes in 1966, just four years after Interior had still held a reservation for the Tribe. According to the testimony of staff responsible for preparation of the list, BIA Headquarters prepared a preliminary

list that was then circulated to Area Offices for comment. A final list was prepared by Headquarters based on those comments on December 5, 1969. Testimony of Patricia Simmons, before Administrative Law Judge Torbett, Aug. 23, 1994, in *Greene v. Babbitt*, Case No. Indian 93-1 (USDOJ Office of Hearings and Appeals). The final list was published for the first time in the Federal Register on January 31, 1979. 44 Fed. Reg. 7235 (1979). Given that a reservation was so recently held for the Tejon Indian Tribe, and given that the very members for whom the land was set aside were still alive and well in 1966, it appears that the Bureau simply made an administrative error when it failed to include the Tribe on its list.

II. COMPARISON OF THE TEJON INDIAN TRIBE AND THE OTHER TWO LOWER 48 TRIBES RETURNED TO THE LIST

The fact pattern of the Tejon Indian Tribe compares very favorably to those of the two Lower 48 tribes whose status has been confirmed by the Assistant Secretary.¹ This summary compares the United States' historical relationship with the Tejon Tribe to the United States' historical relationship with the Ione Band of Miwok Indians and the Lower Lake Rancheria. As shown below, the history of the United States' acknowledgment of the Tejon Tribe is every bit as compelling (if not more so) as the United States' continuing acknowledgment of Ione and Lower Lake. While the Tejon Tribe's history shares many similarities with the those of Ione and Lower Lake, the United States' litigation on behalf of the Tejon Tribe and the BIA's establishment of a school for Tejon children make Tejon's longstanding acknowledgment truly unique. Indeed, the Tejon Tribe's acknowledgement compares favorably to other federally recognized tribes given that the United States has never pursued affirmative litigation for many of those tribes. Accordingly, the United States' recognition of the Tejon Indian Tribe must be reflected on the Department of the Interior's list of federally recognized tribes.²

History of Recognition: The Tejon Indian Tribe

Over the last century and a half, the United States' acknowledgment of the Tejon Tribe is continuous, not sporadic or historic only, as evidenced by:

- ***Treaty relations:*** In 1851, the federal government negotiated a land cession treaty with the Tribe. *See Treaty Made and Concluded at Camp Persifer F. Smith, at the Texan Pass, State of California, June 10, 1851, Between George W. Barbour United States*

¹ Assistant Secretary Gover also reaffirmed the status of two Alaska Native Tribes in 2000, the King Salmon Tribe and the Shoonaq' Tribe of Kodiak. The fact patterns of Alaskan Tribes are so dissimilar to that of American Indian tribes in the Lower 48 States that we did not think it useful to try to compare them here.

² The Tribe notes that there is a pending lawsuit in which a tribe that petitioned for federal acknowledgment under 25 CFR Part 83 seeks reaffirmation of previous federal acknowledgment, also citing the Ione and Lower Lake decisions. *See Muwekma Ohlone Tribe v. Salazar*, CV No. 03-1231 (D.D.C.). The plaintiff there argues that federal recognition of the tribe between 1914 and 1927 is sufficient reason to place the tribe on the list of recognized tribes, notwithstanding the final decision of the Office of Federal acknowledgment that the group does not constitute an Indian tribe. 452 F. Supp.2d 105 (D.D.C. 2006). The recognition of the Tejon Tribe is continuous, not just historic. Further, the Tejon Tribe is not the subject of a negative (or any) determination by the Office of Federal Acknowledgment. For these reasons, the Department can place the Tejon Tribe on the list of recognized tribes without jeopardizing its litigation position in the Muwekma suit.

Commissioner, and the Chiefs, Captains and Head Men of the "Castake," "Texon," &c., Tribes of Indians.

- ***Establishment of Reservation:*** On two occasions, Interior withdrew land from the public domain as a reservation for the Tribe. Interior maintained the reservation established for the Tribe in 1916 until 1962 (45 years). Just prior to revoking "the departmental order of November 9, 1916, temporarily reserving and setting aside . . . lands for use of the El Tejon Band of Indians" and restoring the Tribe's reservation to the public domain, BIA reported that the land was "steep hillside grazing land of poor quality without water . . . [and that] no Indians liv[ed] on or directly adjacent to the lands." The 1961 report explained that Tejon members continued to live on their aboriginal lands on Tejon Ranch.
- ***Federal Superintendence:*** Beginning in the 1850s, the Bureau of Indian Affairs set up, and for more than a decade managed, a military reservation located within the Tribe's traditional territory for the Tribe's use and benefit. BIA Superintendent reports from this time period detail the Department's efforts to encourage farming and to identify the Tribe's leadership, its population and the status of their resources.³ In the decades that followed, the area passed into private ownership and the Tribe remained in peaceable possession of its lands until 1910s.

Beginning in 1914, the Department received reports of abuse by non-Indian landowners and investigated the Tribe's situation, compiling a census of tribal members living at Tejon Ranch in 1915. Interior included the Tribe in later Indian censuses. In the decades that followed, Interior made repeated attempts to purchase land for the Tribe from the Ranch and to identify other lands acceptable to the Tribe for purchase. Interior ultimately negotiated an arrangement with Tejon Ranch whereby the Tribe could reside on its aboriginal lands for nominal annual rent. This arrangement is described in Superintendent Dorrington's 1927 memorandum regarding landless California tribes. Interior included the Tribe on a 1929 list of tribes and a 1950s list of reservations and tribes. After an earthquake on the Tejon Ranch in the 1950s, Interior made inquiries regarding the welfare of the Tribe and attempted to coordinate relief to tribal members.

- ***U.S. Pursues Land Claim Litigation on Tribe's behalf:*** DOJ, at Interior's request, litigated a land claim against the Tejon Ranch all the way to the Supreme Court as "guardian for sundry Indians known as the Tejon Band or Tribe of Indians . . . [and] said Indians are and from time immemorial have been tribal Indians, and at all times since July 7, 1846, have been and now are wards of the United States." The Supreme Court accepted the United States' assertion of the

³ For example, the 1862 Annual Report of the Superintendent for Southern California to the Secretary described the "condition of the various Indian tribes which have been intrusted [sic] to my care," including "the Indians properly belonging at present to the Tejon reservation..."

federal trust relationship, but ruled against the United States on the merits of the claim.

- ***Education of Tribal members:*** BIA provided funding to educate Tejon Indian children beginning in 1916 and funded the construction and operation of an Indian school for the Tribe from 1922-1948. Numerous Tejon children also attended Sherman BIA boarding school.
- ***BIA Correspondence with Senate:*** In the late 1960s and 1970s, BIA responded to Senate inquiries regarding the Tribe by recounting the history of the reservation set aside for the Tribe, the land claim litigation on behalf of the Tribe to the Supreme Court, and the arrangement made by BIA to allow tribal members to remain in their aboriginal village on Tejon Ranch for a nominal annual rental. The Department never asserted in this correspondence that the Tribe's status was terminated or that the Tribe has ceased to exist.

History of Recognition: The Ione Band of Miwok Indians⁴

Based on the record available to us, the Department's continuing acknowledgement of the Ione Band of Miwok Indians can be summarized as follows:

- ***General Federal Superintendence:*** As with Tejon, Indian Agent Terrell prepared a census of the Ione Band in 1915. Like Tejon and Lower Lake, Interior included the Ione Band on its 1950s list of reservations and tribes.
- ***Attempts to Acquire Land for Ione Band:*** The Department attempted to purchase land for the Ione Band in the 1910s and 1920s, although the Department does not appear ever actually to have held land for the Tribe. The Department's attempts to secure land for the Ione Band and Tejon are discussed in Superintendent Dorrington's 1927 memorandum. In 1972, Commissioner of Indian Affairs Louis Bruce agreed to accept title to a parcel of land in trust for the benefit of the Ione Band. However, the land was never placed into trust.

The end result was that in 1994, Assistant Secretary Ada Deer reaffirmed Commissioner Bruce's letter. Through this mechanism she agreed to accept the parcel of land into trust⁵ and placed the Ione Band on BIA's list of federally recognized tribes.

History of Recognition: The Lower Lake Rancheria

Based on the record available to us, the Department's continuing acknowledgement of the Lower Lake Rancheria can be summarized as follows:

⁴ Summaries of the Ione Band of Miwok Indians and the Lower Lake Rancheria are based on information available in the public record.

⁵ According to the Ione Band's website, the Department to this day does not hold any land in trust for the Tribe.

- ***Establishment of Reservation:*** In 1916, the same year that the Department withdrew lands from the public domain to serve as a reservation for the Tejon Tribe, Interior purchased land to establish the Lower Lake Rancheria and held that land in trust for the Tribe until 1956 (40 years).
- ***General Federal Superintendence:*** In 1917, Special Agent Terrell prepared a plat to subdivide the Rancheria into assignments. Documents regarding IRA elections during this time period suggest that at least 20 members resided on the Rancheria. Superintendent Dorrington's 1927 memorandum also suggested the acquisition of land for the Lower Lake Rancheria. In 1935, the Department contemplated acquiring a nearby parcel for the Tribe. In the late 1940s, the Department granted an assignment of the entire Rancheria to four members. In 1950, the BIA surveyed the Rancheria's population. In the early 1950s, the County in which the Rancheria is located approached the Department asking to acquire the Rancheria for use as an airport and the Department consulted with the members residing on the Rancheria about the sale. Like Ione and Tejon, Interior included the Tribe on its 1950s list of reservations and tribes, noting that the Rancheria was "sold to Lake City for Air port site." In 1980, the BIA explicitly considered including the Tribe on the list of federally recognized tribes, but did not do so.
- ***Federal Legislation:*** In 1956, Congress enacted special legislation authorizing the conveyance of the Rancheria. Unlike legislation enacted to terminate tribes in California, the Lower Lake Act did not contain a provision to terminating the Tribe's legal status as a federally recognized tribe.

Based on these factors, Interior placed Lower Lake Rancheria on its list of federally recognized tribes in 2002.

III. CONCLUSION

Because the federal government's acknowledgement of the Tejon Indian Tribe is clear and continuous, and because Congress never has terminated the United States' relationship with or obligations to the Tribe, confirming the Tribe's acknowledged status by including it on the List of Federally Recognized and Acknowledged Tribes is well within the Assistant Secretary's authority and consistent with the Department's past practice. It also serves the cause of justice long delayed to this Tribe.