

Stand Up For California!

“Citizens making a difference”

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Cheryl Schmit, Director
P. O. Box 355, Penryn

September 3, 2002

Honorable Gray Davis
Governor of California
Office of the Governor
State Capitol
Sacramento, CA. 95814

RE: Requesting a Veto on SB 1828 authored by Senator Burton and SB 483 authored by Senator Sher: *Mining: historical* resources: affected Native American sacred sites: California Environmental Quality Act.

Dear Governor Davis:

Stand Up For California respectfully requests your veto on this unwarranted legislation and encourage tribal governments to actively participate in the CEQA process of their local jurisdictions. Local elected officials are committed to protecting the delicate balance of environmental standards and smart development. Citizens, businesses and tribal governments have the opportunity through the CEQA process to make comment and litigate projects on ‘a level playing field’.

This legislation would create a legal situation in which local government would once again be pitted against a sovereign entity beyond their regulatory authority. This legislation is not a friendly application of tribal jurisdiction over “Indian Lands” and “Indian peoples” but an effort to achieve dominance over non-Indian citizens, businesses and government. Such an action would aggravate further the transgression of the civil rights and property rights experienced by non-Indian citizens in proximity to Indian lands.

This creates an unfair and potentially insurmountable legal hurdle for private businesses at a time when the State needs to encourage the development of private business to offset a budget deficit. Moreover, this action places unnecessary hardships on state regulatory authority over land use and citizens.

This bill represents recognition of the sovereignty of Native American tribes that simply does not exist. The United States Supreme Court has recently clarified the limits of inherent sovereignty of tribal governments in *Nevada vs. Hicks* (2002) 121 S. Ct. 2304: *Montana vs. United States*, 450 U. S. 544 (1981): and *Oliphant vs. Suquamish Indian Tribe*, 435 U.S. 191 (1978):

To safeguard the good working order of the State of California we respectfully request your veto on SB 1828 and the accompanying clean up legislation SB 438.

Sincerely,

Cheryl A. Schmit, Director
916-663-3207

Attachments: State and Federal laws that protect Native American artifacts
U. S. Supreme Court Cases clarifying the limits of tribal sovereignty

Court Rulings:

Nevada vs. Hicks (2002) 121 S. Ct. 2304: a case decided by the United States Supreme Court on June 25, 2001. The *Nevada vs. Hicks* decision relied on two previous rulings, *Montana vs. U. S.* and *Oliphant vs. Suquamish Indian Tribe*. The Supreme Court held that the tribal court did not have jurisdiction to adjudicate state officials conduct in executing a search warrant to a tribal member for an off reservation crime. More importantly the Supreme Court in regards to the jurisdictional reach of tribal courts over nonmembers, stated

“...tribal courts, it should be clear, cannot be courts of general jurisdiction in this sense, for a tribe’s inherent adjudicative jurisdiction over non members is at most only as broad as is legislative jurisdiction.” Id. At 2314.

In other words, absent a federal law providing tribal court jurisdiction over a particular cause of action, tribal courts lack jurisdiction to adjudicate actions over non-tribal members. The Hicks case provides a clear limitation of Tribal Court jurisdiction over nonmembers.

Montana vs. United States, 450 U. S. 544 (1981): A case decided by the United States Supreme Court in 1981. The case ruled over both the criminal and civil position of tribal government authority. Tribal governments do not have civil regulatory jurisdiction over non-Indian activities on fee lands or owned lands inside of tribal reservations. Tribes simply do not have full regulatory authority over non-Indians. Moreover the Supreme Court is reading this case broadly stating that tribes do not have inherent jurisdiction over non-Indians civil matters at all although tribal governments may regulate hunting and fishing on tribal lands. There are two exceptions in this ruling:

1. Citizens who enter into contracts with tribes are bound and under tribal jurisdiction.
2. Or the civil activity of non-Indian citizens threatens the political integrity of the tribal government or the health or security of the Indian government.

Oliphant vs. Suquamish Indian Tribe, 435 U.S. 191 (1978): A case decided by the United States Supreme Court in 1978 simply ruled that tribes have no inherent criminal jurisdiction over non- Indian citizens.

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Laws Protecting Native Cultural, Archaeological, Religious and Historic Sites
Copied from the 2000 Field Directory of the California Indian Community
California Indian Assistance Program
Department of Housing and Community Development State of California

State Laws

Public Resources Code Section 5097.9 – Native American Historical, Cultural, and Sacred Sites

Health and Safety Code Section 7050.5 – Removal of human remains from location other than a dedicated cemetery, offense; discovery of remains

Health and Safety Code Section 7054 – Deposit or disposal of human remains outside cemetery; misdemeanor, reburial of Native American remains.

Government Code Section 6254 – Confidentiality of records maintained by the Native American heritage Commission relating to Native American Graves, cemeteries and sacred places exemption from disclosure under the Public Records Act

California Environmental Quality Act (CEQA) – Requires all state and local agencies and governments to evaluate proposed activities, which may significantly affect the environment, including cultural resources. Compliance may include preparation of Negative Declarations or Environmental Impact Reports (EIR)

Federal Laws

American Indian Religious Freedom Act of 1978 – States that the policy of the United States to protect and preserve for American Indians their inherent rights of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and native Hawaiian. These rights include, but are not limited to access to sites, use and possession of sacred objects, and the freedom of worship through ceremony and traditional rites.

Native American Graves protection and Repatriation Act of 1990 (NAGPRA)- requires federal agencies and federally sponsored museums to establish procedures for identifying native American groups associated with cultural items on federal lands, to inventory human remains and associated funerary objects in federal possession, and to repatriate (return) such items upon request to affiliated groups. Also requires that any discoveries of cultural items covered by the act shall be reported to the head of the federal entity that shall notify the appropriate Native American tribe or organization.

Archaeological Resources protection Act of 1979 (ARPA)- Prohibits the removal, sale, receipt and interstate transportation of archaeological resources obtained illegally (without permits) from public or Indian lands and authorizes agency permit procedures for investigations of archaeological resources on public lands under the agency's control. Amendments to ARPA state that the Secretaries of the Interior, Agriculture, and Defense shall develop plans for surveying the lands under their control to determine the nature and extent of archaeological resources, prepare a schedule for surveying those

lands that are likely to contain the most scientifically valuable archaeological resources, and develop documents for reporting suspected violations.

National Environmental Policy Act of 1969 (NEPA)- State the policy of the federal government is to preserve important historic, cultural, and natural aspects of our national heritage and requires consideration of environmental concerns during project planning and execution. Required federal agencies to prepare an Environmental Impact Statement for every major federal action that affects quality of the human environment, including both natural and cultural resources.

National Historic Preservation Act of 1966 (NHPA) – Establishes historic preservation as a national policy and defines it as the protection, rehabilitation, restoration, and reconstruction of districts, sites, building, structure, and objects significant in American history, architecture, archaeology engineering and culture. Significance in determined by specific criteria. National Register of Historic Places is maintained by the Nation Park Service for the Department of the Interior.

Antiquities Act of 1906 – Provided for the protection of historic and prehistoric ruins and objects of antiquity on federal lands and authorizes scientific investigation of antiquities on federal lands, subject to permits and other regulatory requirements. Paleontological resources are covered by the act.

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