Stand Up For California!
"Citizens making a difference"
www.standupca.org

P. O. Box 355
Penryn, CA. 95663

April 2, 2018

Honorable Doug LaMalfa
United States Congress
322 Cannon House Office Building
Washington, D. C. 20515
Fax: 202 226 0852

RE: Concerns Regarding H.R. 3535

Dear Congressman LaMalfa,

As you know, *Stand Up For California!* is a nonprofit benefit corporation that acts as a statewide community watchdog. Since the introduction of tribal gaming in California, our organization has focused on issues of federal Indian law and policy, local and state revenues and the welfare of the non-tribal public and operations of good government. We appreciate working with your office and sincerely appreciate the support you have furnished to the communities affected by off-reservation gaming.

Stand Up for California! writes today regarding potentially problematic language in H.R. 3535. In 2013, our organization was deeply involved in the rulemaking process to revise 25 C.F.R. Part 83 – *Procedures for establishing that an Indian Group exists as an Indian Tribe*. We worked with groups in other states equally concerned about the draft of the proposed rule, but the revisions to Part 83 were of particular concern to California communities as California has more petitioners seeking acknowledgment than any other State. Nearly half of the State's eighty-one ("81") petitioners submitted their petitions after 1998, the year the first statewide ballot measure was passed to legalize slot machines on Indian lands in California.

Stand Up for California! is concerned that H.R.3535, as currently drafted, may have unintended consequences by encouraging tribal groups—many supported by gaming interests—to seek federal recognition through Congress, rather than through the regulatory process. The Department of the Interior's regulatory process is intended to ensure that petitioner groups meet specific criteria for acknowledgment. H.R.3535, however, is inconsistent with the acknowledgement regulations, as it does not involve the historical, political, and geneaological analysis that the regulations require—even under the relaxed standards adopted in 2015. The legislation provides an opportunity for tribal groups without historical evidence to seek recognition and mandatory acquisition of lands for gaming. This invites gaming interests from out-of-state and off-the-continent to promote additional congressional legislation to recognize a number of tribal groups residing in Los Angeles, Orange, Kern and San Francisco Counties.

H.R. 3535 provides recognition to any and all individuals of Indian ancestry, limited to a certain geographic area. Federal recognition provides a significant economic benefits and establishes a Tribe as a government with sovereign rights, immunity from civil regulatory state laws, immunity from suit, and authority and jurisdiction over its members, land, and—in some instances—non-tribal citizens. Thus, it is essential to ensure that there is a Tribe, as the Supreme Court has interpreted it. A tribal group must demonstrate that it has survived as organized and exercised governance, culturally, politically and economically over its membership

and its lands. Recognizing groups that do not meet these requirements dilutes what it means to be a federally recognized Tribe and accords sovereign status and powers to entities that have never had such claim. The Ruffey Rancheria or the several groups included in this legislation have not provided significant evidence that they meet the acknowledgment criteria.

Historically, Rancherias were purchased with funding through appropriations acts from 1907 to 1929 (and again in 1937) "for the purchase of lands for the homeless Indians of California including improvements thereon, for the use and occupancy of said Indians..." Thus, it is particularly significant that the Ruffey Rancheria meet the requirement of identifying lineal decedents from a historic tribe. H.R. 3535 does not ensure that this standard is satisfied and instead offers language contrary to the required benchmark in federal regulations and prior restoration legislation. In fact, H.R. 3535 restores a number of groups not directly residing on Ruffey Rancheria or identified as the Etna Band of Indians in 1907 or its distributees in 1958. Courts that have restored Rancherias have approved settlements between tribal groups and the Department of the Interior that limit restoration to distributees and heirs. H.R. 3535 identifies the distributees and heirs and should end the membership criteria there.

Although the 1923 annual report from the Reno Indian Agency identifies several other groups of Indians in Siskiyou County, the Rancheria land was purchased for the Etna Band only. The other groups have homes in the cities and small towns or own their own properties or rent. The Agent wrote:

> "In conclusion of the discussion of Siskiyou County, kindly be advised that practically all the Indians of this County are mixed bloods, many who resent being classed as Indians and desire to be considered as whites, except when it suits their convenience to be classed as an Indian. Further, practically all of the Indians of Siskiyou County are treated by the whites of this County as their equal, industrially as well as socially."

The bill identifies a track of land consisting of 441 acres, which was established for the Etna Band of Indians in 1907. In 1907, approximately 56 individuals resided on the Rancheria. By 1958, the Rancheria was deserted and there were no remaining inhabitants. Although the federal record indicates that there were three (3) individuals with an interest in the land: Mrs. Harry Lippen, Mr. Roy Abernathy and Mr. Edmond Abernathy. (*See*-Report accompanying H. R. 2824, 85th Congress 2d Session, Senate, Report No.1874, July 22, 1958)[1] It has been more than 58 years since any organized group has possibly exercised governance over land or its members. If it does not appear that this tribal group could meet the federal acknowledgment standards—and there is no evidence to suggest that it would—it should not be acknowledged or restored congressionally.

Practically speaking, this bill sets a precedent that will result in disproportionate impacts to State and local governments, land owners, businesses, school districts and taxpayers. The bill establishes a *Tribal Consolidation Area* (TCA) in addition to the land held in fee by distributees, dependent members or heirs or successors in interest that SHALL be taken into trust as "restored lands." This is problematic to the non-tribal community because the TCA includes private property of non-tribal citizens within a designated area, effectively reducing the property values and potentially placing a cloud over property titles. A TCA opens lands to tribal developments that may promote projects inconsistent with zoning and general plans and threaten the shared resources of the area.

Congressionally restored lands are a mandatory acquisition. There will be no federal environmental review, no federal process to participate in, and no Secretarial discretion on whether or not land should be taken into trust for gaming or any other project the Tribe decides to construct. While tribes are required to negotiate a

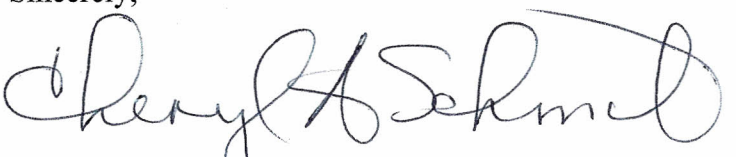
[1] Note this report conflicts with the testimony of John Tahsuda of September 26, 2017 before the Subcommittee on Indian, Insular and Alaska Native Affairs hearing of H.R. 3535 in which Principal Deputy Asst. Secretary Indian Affairs identifies 4 distributees.

tribal state compact for class III gaming (casinos with slot machines), H.R. 3535 will enable the Tribe to promote a number of class II gaming facilities (bingo machines that operate similar to a slot machines) on any lands acquired within the Tribal restoration area. The bill may thus provide criteria for limiting the location of a class III casino, but it will not limit the establishment of multiple class II gaming facilities.

Currently the Department of the Interior is consulting with Tribes regarding the revamping of Off-Reservation (151.11) land acquisitions. Considering the passage of time that has occurred since the termination of federal property in Siskiyou County and non-tribal parties that rely on local government ordinances, community plans and general plans, it is reasonable to request that all land acquisitions be processed as discretionary. While the current land acquisition process is not perfect, it at least offers an opportunity to all affected parties to participate and identify legitimate concerns for the Secretary's consideration.

Stand Up for California requests your office to consider the issues we have raised and tighten the language of this bill to protect the shared resources of the area and the private property rights of the non-tribal citizens of both Siskiyou and Shasta Counties.

Sincerely,



Cheryl A. Schmit, Director
Stand Up For California
916 663 3207
cherylschmit@att.net
www.standupca.org