

# Randy Martinez Distributing

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Mr. Dale Morris, Regional Director  
United States Department of the Interior  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

Re: Draft Environmental Assessment for the Proposed 40 Acre Fee-to-Trust Transfer for the Tule River Indian Tribe

Dear Mr. Riesling:

I wish to express my concerns regarding the potential economic impact of the Tule River Indian Tribe's efforts to transfer a 40 acre parcel of land to Fee to Trust status.

I have been a business owner in the Porterville area for 26 years. I know how it is to compete with other like businesses on a daily basis, and I know that if I were to compete with a business that had to pay no state and local sales taxes, my business would possibly be in peril. In America, a free market helps business owners compete fairly. This proposal may prove to be detrimental to business owners in that it offers unfair competition. Many local businesses could be negatively affected.

The goal of this letter is not to diminish the fact that the Tule River Indian Tribe has been a positive entity in our community. Porterville truly benefits from the tribe's generosity, friendliness, and cultural offerings. We as a community are fortunate to have the Tribe as neighbors.

Please consider the implications of the Tule River Indian Tribe's proposal to transfer the 40 acres to a Fee-to-Trust status. I urge you to refer the proposal back to the Tribe for further revision concerning the economic impact on local businesses.

Sincerely,



Randy Martinez  
Randy Martinez Distributing

Please refer to attached news article, this article reaffirms my concern that the fee to trust acquisition will create an unfair trade advantage for the Tribe.

## Gas stations: latest fight of tribes against the locals?

By **Malcolm Maclachlan** | 07/29/10 12:00 AM PST

At a Porterville City Council meeting last week, a group of gas station owners got up and spoke out against a plan by the Tule River Tribe to open up a 40-acre retail complex near that town's airport. They said they were afraid that the tribe would open up a gas station and put them out of business because it wouldn't be required to pay state and local taxes.

The tribe hasn't proposed building a gas station on the site. But it already operates a large, 20-pump station several miles to the north, near the tribe's casino, that locals say does appear to be hurting the business of nearby fuel stations.

In fact, several tribes operate gas stations around the state, and their fuel generally costs less than non-tribal stations. But no one in state government seems to know how many there are, how much gas they sell, or how much tax revenue is — or isn't — being lost.

The manager of the Tule Tribe's station noted that they have to buy gas from out of state, eating up some of their profits. Their fuel comes from an Indian-run company chartered under the bylaws of the Yakama Tribe in Washington State, which claims a special trade status under a treaty with the federal government.

After opposing two earlier applications, the Porterville City Council voted on July 20 to send a letter to the U.S. Department of the Interior stating that it supports the tribe's bid to bring 40 acres of land into trust for the purposes of opening businesses. The Council cited an April "cooperation agreement" with the tribe, which it believes would give the city some control over what types of businesses are on the site and cut the city in for some share of revenues to backfill lost tax revenue. This isn't enough for local service station owners.

Twenty five of them sent a letter to Andrea Hoch, legal affairs secretary to Gov. Arnold Schwarzenegger, on July 14 raising concerns about the project. The proposal "neglects to identify the future plans of the tribe," and invites "unfair competition" that would harm local businesses.

On Monday, Hoch sent a letter to Interior declining to support the tribe's bid to bring the land into trust, a key step in creating the kind of ownership that would allow them to open up tax-exempt retail.

"We do not believe there is enough information regarding the future use of the land to allow proper evaluation of the proposed economic development," she wrote.

"What I've heard is they propose to put a shopping center there," said Peter Long Yam, owner of Poplar Mini Mart in Porterville and one of the 25 letter-signers. "The problem is they can change in the future. I would assume they would. They may not do it today, but five years down the line, why not?"

Long Yam said his business has dropped off significantly since the tribe's Eagle Feather Trading Post opened up two years ago, though much of this can be attributed to the economic downturn. While he used to buy six or seven 8,000 gallon truckloads of fuel a month, these days he sells only four or five loads.

But he's at least ten miles away. Stations closer to the Eagle Feather station are doing worse, Long Yam said. If the tribe opens up a station on the land near the airport, which is about four miles from his Mini Mart, he said it will probably put him under.

"That's our life savings wiped out in a heartbeat," Long Yam said. "That's why I'm concerned. We still owe a lot of money to the bank."

The approval of the Tule project is a reflection of changes in the makeup of the City Council, said Kelly West, who opposed land applications while mayor of Porterville from 2005 to 2006. He noted that the current mayor, Ron Irish, who runs a burglar alarm company called Stop Alarm, installed burglar alarms at buildings owned by the Tule River Tribe. Irish recused himself from the debate and vote over the tribal land. A call to the City Council was not returned as of press time.

"If you let them come in here and start selling gas, next thing they will open retail stores," West said. "They will put this city under."

It's a "tough market" for fuel stations in general, due to the economy, said Jim Blaylock, manager of the Eagle Feather station, speaking with the permission of a tribal administrator. He also said that the problem of service fees from credit and debit card companies has gotten more acute, because many stations are staying alive on thin margins.

Blaylock confirmed that his station avoids about 44 cents a gallon in state and local taxes. But they're also under constraints about how they can buy the gas, which ends up eating up much of the difference. The actual price difference between his station and others in the area is about nine cents a gallon, Blaylock said - the equivalent of not having to pay sales tax. He said the Eagle Feather station is probably the third-biggest in the San Joaquin Valley, after a pair of mega-sized truck stops on rural Interstate 5.

When you fuel from a wholesaler in California, Blaylock said, the state taxes have already been paid and built into the price. This means that in order to get the tax break, they have to buy from an out-of-state wholesaler. Their fuel meets California air quality standards, he said, but needs to be trucked in 377 miles from Nevada, eating up much of the price difference.

That wholesaler is First American Petroleum and Tobacco, based in Washington State. The company was founded by Robert Ramsey, a Yakama member, and is licensed under the tribe's bylaws, though the tribe itself does not own a stake. According to the company's website, "We come from an Indian family that has been in business for over 100 years... In 2007, we decided to share our knowledge with our fellow brothers and sisters to give them an economic advantage over non-tribal members."

Ramsey declined to give out details of his business, such as how many clients First American has or what kind of sales volume they do. He did note that he started one of the first tax exempt tribal gas stations in 1989. According to his resume, posted on the First American website, he owns numerous other businesses, including Yakima Indian Petroleum, Inc. and a 26,000 acre cattle ranch.

The Yakama Tribe has a special legal trade status, Ramsey said, even compared to other Indian Tribes. In fact, First American was founded after the conclusion of a U.S. Supreme Court case, U.S. Attorney's Office v. Harry James Smiskin. That case dealt with charges against Smiskin, who became chairman of the 11,000-member tribe in this past January, for transporting "unstamped" cigarettes. The court found that the prosecution violated the federal government's 1855 treaty with the tribe, which severely constrains how the government can restrict the commercial activities of the tribe and its members. Only one other U.S. tribe - the Nez Perce, also based in the Pacific Northwest - have the same status, he said. "That court case gives us the right of no interference by state and federal government on the highways," Ramsey said.

No one seems to know how many tribal run gas stations there are in California. A spokesman for the California Energy Commission said they send out a questionnaire each year to every gas station they know of in the state; each year, they get "two or three" responses back from stations stating they are run by tribes and therefore don't need to participate.

Dmitri Stanich, a spokesman for the California Air Resources Board, said that stations run by tribes on tribal lands could operate outside of state and local regulations. Local air district boards could approach them about participating in air quality programs, but this would be strictly voluntary.

Calls to the Franchise Tax Board, Controller's office and the Board of Equalization also failed to shed much light on how many stations are operated by California tribes. A 2004 story in Indian Gaming magazine stated that there were 12. The story said there were 123 others in 20 states, with the most in three states with large Indian populations: New York, Oklahoma and Wisconsin.

The Morongo Band of Mission Indians has opened a huge, 32-pump station in 1997. The Morongo Travel Center sits on tribal land next to their Morongo Casino Resort & Spa on Interstate 10. But it pays all relevant taxes, according to a spokesman, Patrick Dorinson, and does not purchase gas from First American. A search on CaliforniaGasPrices.com shows that prices there are between 27 cents and 41 cents cheaper per gallon than nearby Shell and Valero stations, though their prices are actually a few cents higher than some discount stations on the far side of Palm Springs, over 20 miles to the east.

"We buy our gas locally in southern California," Dorinson said. "It's just a standard gas station."

Earlier this month, the Picayune Rancheria of Chukchansi Indians made headlines with the news they would open a \$5 million, 25,000 square foot Chukchansi Crossing retail center on Highway 41, near their Chukchansi Gold Resort-Casino in Coarsegold.

But contrary to reports that the tribe plans to sell gas at a 35 cents-per-gallon discount, the tribe has not actually decided to open up a service station, according to their lobbyist, David Quintana. He said the specifics of running a tribal gas station can be "complicated," and that they want to work out a "revenue sharing" plan with local government to help offset lost tax revenues.

"They do want to open a gas station," Quintana said. "But they also know they do want to do something with the county. They're trying to figure out how they can make it a win-win."

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