

# ***Stand Up For California!***

**“Citizens making a difference”**

standupca.org

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June, 15, 2006

Chairman Bill Campbell  
Honorable Members of the Orange  
County Board of Supervisors  
Hall of Administration  
10 Civic Center Plaza  
Santa Ana, CA.

## **RE: Resolution No. 06-028 - The Juaneno Band of Mission Indians**

Dear Chairman Campbell and Honorable Members of the BOS:

Stand Up For California is a statewide organization focusing on gambling issues affecting California. We have been involved in the ongoing debate of issues raised by tribal gaming and its impacts for a decade. Since 1996, we have assisted individuals, community groups, elected officials, members of law enforcement, local public entities the State of California, and the federal government, in responding to and dealing with tribal gaming impacts. We are recognized as the “go to” resource of information for local, state and federal policy makers.

Stand Up For California writes to the Orange County Board of Supervisors (County) regarding the recent passage of Resolution No. 06-028 – The Juaneno Band of Mission Indians, March 7, 2006. The County may not be aware that the *active consideration* of the Juaneno groups’ petition began on October 30, 2005. This date began a 12 month federal process providing a comment period for all affected parties. This Resolution, no doubt will be used as a political tool by one or both petitioning Juaneno factions to demonstrate widespread County support of its application for federal recognition and future plans.

We respectfully request that you give significant consideration to our comments and reconsider Resolution No. 06-028. As written, this Resolution has many unintended multi-jurisdictional consequences. Moreover, the Resolution affects future actions of the County in development of intergovernmental agreements with the new sovereign, land acquisitions, casino gaming or sacred land determinations, all affecting the County General Plan and the public who support your political careers. This Resolution has the potential to affect the political and legal authority of the County today and into the future.

### **Unintended Consequences:**

The political influence of third party gaming investors continues to be well documented in reports by the Government Accounting Office, the Inspector General for the Department of the

Interior, and various Congressional oversight proceedings. We have been advised in recent months that two factions of the Juaneno's have new investors associated with a casino tribe or a gaming attorney.

The County support of the Juaneno acknowledgement process sets the stage for a number of future developments which include a metropolitan casino potentially in Orange, Los Angeles, or San Diego counties. This is because acknowledgement of a Tribe is a clear and indisputable exception to acquire land for gaming under section 20 of the Indian Gaming Regulatory Act. The exceptions to the general prohibition on lands acquired in trust after 1988 by the Secretary are found in 25 U.S.C. 2719. The applicable exception states:

**25 US 2719 (b) (1) (B) (ii)**

**the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or**

Under this exception, the establishment of a land base for an "initial reservation" is a mandatory acquisition of land.

Mandatory land acquisitions may be processed as an "on-reservation" acquisition (25 CFR 151.10). A mandatory acquisition precludes gubernatorial or state opposition and makes the Secretary of the Interior's job ministerial in the process. Newly acquired land is removed from the County tax roll without obligation to adhere to any local zoning, building ordinances, including protective statues such as California Environmental Quality Act that protects natural resources. Federal acknowledgement entitles the new sovereigns immunity from civil liability and most regulatory state statutes.

The Resolution as written supports necessary criteria for the establishment of an "initial reservation" by declaring all of Orange County to be "historic and aboriginal lands" of this specific political group.

**County Due Diligence - California Evidence Code Section 622:**

The Resolution as written raises some serious questions regarding County efforts to ensure the validity of the statements made. The recitals in this resolution constitute admissions by the County recited in a written instrument and conclusively presumed to be true. It is imperative that the County be certain that these recitals are in fact true as they will affect future actions of the County affecting all of its inhabitants. For example:

**Whereas, the Juaneno Band Mission Indians, Acjachemen Nation, whose villages were spread out over their aboriginal territory throughout Orange County, from the Pacific Ocean to the West to parts of Los Angeles County to the North, to parts of Riverside Count to the east, and to parts of Camp Pendleton to the South, it is appropriate at this time that they be given special recognition and commendations by the public, ...**

Has the County carried out its own independent finding based on the merits or review of anthropological, genealogical or historical information to support this recital?

Indeed, serious issues exist regarding County documentation to satisfy the definitions and criteria in federal law found in 25 CFR Part 83, that the Juaneno have had “earliest sustained non Indian settlement and/or governmental presence in the local area”?

Historical documents question these findings. For instance, the Indian Claims Commission was created to adjudicate the boundaries of historic Indian lands by the Act of August 13, 1946, 60 Stat.1049, and 25 U.S.C. 70-70v-3. The Commission filed its final report September 30, 1978, identifying all of the adjudicated historic lands of the historic tribes.

Aboriginal lands of the Juaneno did not appear in this conclusive document. By the groups own words the Juaneno were included in *Docket 80, Baron Long v. the United States of America*. However, as a matter of Court Records, *Docket 80* is listed as *Bands of Mission Indians*. Only federally recognized Tribes were allowed to participate in the Indian claims. Participation in the Indian lands claims is not recognition of existing tribal governance by the federal government.

The 1891 Mission Indians Relief Act was intended to protect the California Mission Indians including those located on non Indian grant lands. The Act provided instructions to the Commissioners for the development of Indian Reservations. Thus, the Smiley Commission Report deliberately enlarged certain reservations, Capitan Grande (of which Barona Long is a part), Agua Caliente and Morongo so that sufficient land would be available there - not only for the villages initially settled, but also for other groups of Indians such as the Juaneno then located on private lands.

**Whereas, archeological reports through carbon dating have shown the Juaneno Band of Mission Indians, Acjachemen Nations, to be in existence dating back 10,000 years in Orange County**

There are Native American remains almost anywhere you look in California. Nonetheless, it is an unscientific and an illogical conclusion to make a determination on even a 5,000 year old archaeology site. There is certainly no evidence that *establishes* the existence of, or connection to, a modern Tribal group. Five thousand to ten thousand years is a very long time. Everything has shifted over this period of time, the cultures, tribes; even the geology of the land area has build up and eroded over and over. Can the remains belong to any other tribe in the Southern California area? Such as the Gabrieleno/Tongva or other Luiseno Juaneno peoples which include: Pala, Puma-Yuima, Pechanga, La Jolla, Rincon or Soboba. This is important as there is much intertribal similarity.

Another recital of concern states:

**Whereas, conservatively over 7,000 Juaneno have continued to live in and around Orange County and Mission San Juan Capistrano, and**

In the documents submitted to the Federal Office of Acknowledgement, by the Juaneno in which is stated there were 7,000 Indian labors and servants in Los Angeles and San Diego Counties in 1852. Orange County is not included in the statement as Orange County is not incorporated until 1898 and the lands are all apart of Los Angeles County. This land mass incorporates millions of

acres of land to arrive at a population density of 7000 Indians living in and around Orange County. Certainly no one claims all such persons were Juaneno or “Acjachemen Nation”.

This recital claim flies in the face of a letter dated January 16, 1888, by Indian Commissioner J. D. C. Atkins who was asked to inventory and identify for Congress the Mission Indians living in California. This letter is reproduced in Senate Report No. 74, 50<sup>th</sup> Congress, 1<sup>st</sup>. Session. The letter reported that the Mission Indians are members of four distinct tribes: Serrano, Dieguence (doe gain yos), Coahuilas (co we ha) and San Luis Rey (or San Luisenos).

The Commissioner went onto identify 42 specific villages of Mission Indians and their tribal names today are products of those places, (such as Agua Caliente, Cabazon, Temecula, Rincon, etc. The investigative work, which led to this report for the Congressional inquiry, was “detailed and specific”. Yet there is no mention of “Juaneno” or “puyumkowitchum” or “Acjachemen Nation” or a place named “Axatcmeyam” occupied by Indians at that time.

This does not mean that there was not native people working or living near the Mission San Juan Capistrano with that name, but Congress had no knowledge of such a group living as “an independent community” and did not include them in the Indians identified for the purposes of the Mission Indians Relief Act, which established reservations for Missions Indians in California. However, the introduction of this report does raise serious questions for the need of skilled professionals to investigate the claims made in the recitals of the Resolution by the County BOS.

Moreover, it appears that anyone can become a tribal group member for a donation of \$10.00. In the Cuel Atah, the May 2006 Newsletter – Page 3 is dedicated to the announcement of 2006 ID Cards are now available for a donation of \$10.00 and completion of a form. The only information requested is name, address and contact information. This appears contrary to the requirements of a tribal roll. A tribal roll is an exclusive list of individuals who have been determined by the tribe to meet the tribe’s membership requirements as set forth in its government document.

This Resolution only identifies the Juaneno Band of Mission Indians as seeking their recognition for the last 30 years. The federal regulations require historic contact from 1900 and prior, and the contact must be much more than direct lineal descendants or evidence of individuals residing in and around San Juan Capistrano. The Juaneno tribal groups may be eligible for special programs and services provided by the United States under the Urban Indian programs as all individual Indians who qualify are entitled. But this again does not mean they meet the stringent federal requirements for federal recognition of a sovereign governmental entity.

Governance is evidence of widespread political influence or authority by means of a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects without interruption. It is more than the actions of a few activists, or extended families.

Another recital states:

**...is recognized as the aboriginal tribe of Orange County by the Tribal Chairman's Association of Recognized Tribes,**

Clearly the Southern California Tribal Chairmen's Association (SCTCA) is an Indian advocacy group. The organizations mission statement does not infer any significant research or expertise of aboriginal claims. SCTCA is a multi-service non-profit corporation established in 1972 for a consortium of 19 federally recognized Indian tribes in Southern California. The Primary goals and objectives of SCTCA are the health, welfare, safety, education, culture, economic and employment opportunities for its tribal members. A board of directors comprised of tribal chairpersons from each of its member Tribes governs SCTCA.

Lastly,

**Therefore be it resolved by Orange County Board of Supervisor that they take great pride in support and declaring that the Juaneno Band of Mission Indian, Acjachemen Nation, to be the aboriginal tribe of Orange County.**

Language terms in this recital have specific meaning in federal law, such as "aboriginal tribe". Which petitioning Juaneno tribal group 84A or 84B does the County wish to support and declare the aboriginal tribe of Orange County? If the County is supporting only 84A, will the County pass another resolution to support 84B, who also claims to be an aboriginal Juaneno group? Did the County consider that this claim of "aboriginal lands" may conflict and overlap alleged aboriginal lands with other federally recognized or petitioning groups in nearby San Diego or Los Angeles Counties?

**In Conclusion:**

Stand Up For California respectfully requests that you revisit and revise this resolution. Declaring the Juaneno an aboriginal tribe by a County Resolution is not a sound basis for good public policy. Tribal groups achieving recognition based on political support, instead of hard factual evidence will only continue to be questioned as to its authenticity and create social strife towards tribal governments.

Stand Up For California means no ill-will toward the Juaneno tribal groups and recognizes the hardships experienced by California Indian peoples. Nonetheless, the County has an obligatory responsibility to its *entire citizenry* and must prevent future unintended consequences to all inhabitants of Orange County.

Sincerely,

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CC: Honorable Andrea Lynn Hoch, Secretary Legal Affairs  
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