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June 28, 2005

Honorable Lawrence E. Dales
Mayor – City of Barstow
220 East Mountain View St. Suite A
Barstow, California 92311 -2888
FAX: 760-256-4472

Re: ***Bogus Aboriginal and Historical Nexus to Lands in and Around Barstow.***

Dear Mayor Dales and Members of the City Council:

As you may know, there has been a continuing controversy for several years concerning the legal status of land commonly identified as the Chemehuevi Indian Reservation, which is located around Lake Havasu. The tribe is now attempting to promote the notion that they have an aboriginal and historical nexus to the land in and around the City of Barstow which would be eligible for gaming purposes. In fact, Department of the Interior documents indicate the Chemehuevi Indians have a closer relationship to the land and the 29 Palms tribe in Riverside County. It appears that the Chemehuevi and their financial supporters are promoting another land grab for gaming.

The Chemehuevi assertion claiming a historical and aboriginal nexus to lands in and around the City of Barstow presents a conflicting and unsubstantiated revised tribal history of Indian lands in an attempt to acquire land providing the tribe an exemption for gaming which circumvents a Governor's and Secretary of the Interior's concurrence. The tribe has used court cases to validate their lands, yet these cases were not won on the merits of whether the land was legally a reservation or even deeded to the tribe, rather these cases were won on technical and procedural arguments used to prevent raising the issue of the merits of the land.

I urge this City Council to seek the assistance of your local Congressman and U. S. Senators asking for a substantive answer to the questions presented below, not citation of cases which dismissed claims without deciding them. If the Chemehuevi are to promote gaming in Barstow based on a legitimate exception then the City of Barstow, the County of San Bernardino and surrounding community of citizens must to be assured there is a sound legal basis. The City must not allow unscrupulous investors and land speculators to assert tribal sovereignty for their

financial benefit. This was not the intent of Congress in the development of the Indian Gaming Regulatory Act.

BACKGROUND OF CHEMEHUEVI INDIANS

On April 8, 1964, the United States Congress enacted the California Indian Reservation Act of April 8, 1864, 13 Stat. 39 ("1864 Act"), which limited the number of Indian reservations within the State of California to four. *See Mattz v. Arnett*, 412 U.S. 481, 489 (1973). Although four reservations were established in California pursuant to the 1864 Act, none of them was established for the Chemehuevi Indians.

The 1864 Act is commonly referred to as the "Four Reservations Act," because it specifically provided that no more than four Indian reservations could be established within California:

> *SEC. 2. And be it further enacted,* That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained by the United States for the purposes of Indian reservations *** [Emphasis supplied.]

That the 1864 Act established a federal statutory limitation to four reservations within California which today is still the federal law was confirmed by the Supreme Court in the case of *Mattz v. Arnett*, *supra*. *See also Shermoen v. United States*, 982 F.2d 1312, 1315 (9th Cir. 1992) ("[T]he Act of 1864 superseded the Act of [March 3,] 1853 by allowing only four reservations in California....").

Once the four reservation limitation was legislated, the process for establishing reservations within California became strictly limited in a way distinct to California. And because of the statutory limitation, no additional reservations can be established in California by administrative action, but rather can be established only as specifically authorized by subsequent federal law. Federal laws enacted subsequent to 1864 have authorized the establishment of reservations in California in addition to the original four. However, no subsequent legislation applies to the Chemehuevi Tribe. Simply stated, no federal law has been enacted authorizing the establishment of a Chemehuevi Reservation.

The Mission Indians Relief Act of 1891.

The argument has been advanced by the Tribe in federal courts that Congress created an exception to the 1864 Act in favor of the Tribe when it enacted the Mission Indians Relief Act of January 12, 1891 (26 Stat. 712) ("1891 Act").

The 1891 Act legislated an exception to the four reservation limitation in the 1864 Act by authorizing the establishment of reservations for Mission Indians residing in Southern California – reservations to be established on lands then within the public domain. The identity of Mission Indians was then and is today well known: *they are the Indians of four distinct tribes or bands historically residing adjacent to or near the Catholic missions in Southern California.* In fact, during congressional debate of the 1891 legislation, the Clerk of the House of Representatives

read into the record the text of Senate Report No. 74 (50th Cong., 1st Sess.) which explained the identity of the Mission Indians for those who were not already familiar. *See Congressional Record* for Dec. 10, 1890, at 306-07.

Senate Report No. 74 named the four tribes or bands recognized as Mission Indians: Serrano - population 481; Diogenes - population 855; Keyholes - population 667; and San Luis Rey or San Luisenos - population 1093. The report also identified the 42 residential areas adjacent to missions which were occupied by members of the four identified tribal populations. Not only were the Chemehuevi not identified by Congress as being Mission Indians, but none of the identified residential areas were Chemehuevi.

The 1907 Amendment to the 1891 Act.

In February 1907, the Secretary of Interior administratively withdrew from public domain entry the lands commonly described as the Chemehuevi Reservation. But in recognition of the legal restrictions on additional reservations within California, the 1907 Withdrawal Order did not purport to establish a reservation for the Tribe. Instead, the 1907 Order simply withdrew the lands from entry on the possibility the Congress would legislate a Chemehuevi Reservation.

In March 1907, Congress did pass legislation without creating or even authorizing a Chemehuevi reservation. The 1907 law was a limited amendment to the 1891 Act and did two things only: (1) dissolved a site selection commission which had been created by the 1891 law for the sole purpose of identifying lands to be established as Mission Indian reservations; and (2) transferred to the Secretary of the Interior the commission's land designation functions. The sole purpose of the amendment was to permit the Secretary to add land to existing reservations to accommodate groups of Mission Indians not adequately provided for by the reservation designations previously made. *See* Indian Appropriation Act of March 1, 1907 (34 Stat. 1022).

Significantly and pointedly, the 1907 Act did not amend the definition of Mission Indians to include the Chemehuevi. And at no time has any credible argument been advance in support of the argument that the Chemehuevi were Mission Indians. Indeed, the evidence is to the contrary.

In sum, the Chemehuevi are not Mission Indians, were not provided for in the 1891 Act or the 1907 amendment, and have never had a reservation authorized by Congress.

The Lands Are Public Domain and not Tribal Lands.

In *Indians of California v. United States,* 98 Ct.Cl. 583, 1942 WL 4378 (1942), the United States Claims Court noted that California Indians failed to establish their title to any land within the state pursuant to the Act of March 3, 1851, 9 Stat. 631. The 1851 Act was entitled "An Act to ascertain and settle the private land claims in the State of California" and it required all claimants to land title to establish their title to the satisfaction of a Commission established pursuant thereto.

The Court observed that none of the Indians of California qualified their land claims before the Commission, meaning that "whatever lands they may have claimed became a part of the public domain of the United States." *Indians of California*, 98 Ct.Cl. At 587 (*citing Barker v. Harvey,* 181 U.S. 481 (1901); *United States v. Title Insurance & Trust Co., et al,* 265 U.S. 472 (1924)) (emphasis added).

Following 1907, the BIA and Department of Interior actually administered the reservation area as public domain land and not an Indian reservation. This was demonstrated by the issuance during the period 1910-1920 of a few individual allotments to individual Indians under Section 4 of the Allotment Act of February 8, 1887 (24 Stat. 388). The Allotment Act clearly states that allotments on public domain lands are made under Section 4, while allotments for land within an Indian reservation shall be made pursuant to Section 1. It is a fact that the BIA has never issued a single Section 1 allotment within the so-called Chemehuevi Reservation.

At some point during or just prior to 1974, the Bureau of Indian Affairs began to treat this land as a reservation. We are not aware of any official action or legal basis for this change in policy which reversed the policy subsequent to the Withdrawal Order of 1907 that the land within the so-called Chemehuevi Reservation was public domain.

In 1986 the Tribe suddenly applied to the BIA for issuance of a trust patent pursuant to the provisions of the 1891 Act. That application was denied on a specific finding that the Chemehuevi are not Mission Indians and, hence, not entitled to relief under the 1891 Act. The Tribe did not file a timely appeal to that decision, making it final for the Department under applicable regulations – a finality which has been confirmed in writing by Interior officials.

In the late 1990s, the Tribe renewed its rejected application for trust patent. For some unknown reason and contrary to controlling federal regulations, BIA officials forwarded the matter to the Bureau of Land Management, which has the responsibility of processing the request. The BLM is now considering the trust application despite the history recited above, including the previous final determination that the Tribe did not qualify for relief under the 1891 Act.

The Lands Are Not Held in Trust by the United States for the Tribe.

Various local government and private examinations of the title status of lands within the Chemehuevi Reservation reveal that none of the lands within that area are held in trust by the United States for the Tribe. In short, there is no record of tribal trust status for a single parcel of land within the area claimed as reservation.

THE QUESTIONS TO BE ANSWERED

As stated above, I urge you to seek substantive answers to these questions without reliance on the defenses which have been used by the Tribe to preclude their determination by the courts. If the tribe cannot furnish confirmation of a reservation in California how can they

furnish confirmation of a historical or aboriginal nexus to the lands in and around the City of Barstow?

1. When and how did the Chemehuevi area become a reservation? Please furnish copies of all relevant documents memorializing that action.

2. How was the Chemehuevi Reservation proclaimed a reservation in light of the clear limitations of the 1864 Act and the apparent inapplicability of the 1891 Act?

3. What Act of Congress authorized the establishment of the Chemehuevi Reservation?

4. What land within the Chemehuevi Reservation is held in trust by the United States for the Chemehuevi Tribe? When was it taken into trust and under what authority? Please furnish copies of all relevant documents memorializing that action.

5. What compelling evidence proving historical and aboriginal nexus to the lands in and around the City of Barstow do the Chemehuevi Indians have?

6. What is the historical relationship of the Chemehuevi Indians to the 29 Palms tribe in Riverside County? Does the Chemehuevi Indian Tribe have land that qualifies for gaming in Riverside County?

7. What "independent public policy" attached to the tribes proposed project do the Chemehuevi believe the Governor will accept?

Additionally, I urge you to seek special outside legal council familiar with Indian law, gaming law and California State Election law to review the legality of the proposed ballot measure in the City of Barstow giving special preference to groups and individuals.

If Stand Up For California can be of further assistance please do not hesitate to contact me.

Sincerely,

Cheryl A. Schmit – Director
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CC: Honorable Peter Siggins – Secretary of Legal Affairs
Honorable Daniel Kolkey – Tribal State Compact Negotiator
U. S. States Senator Dianne Feinstein
Honorable George Skibine
Honorable Greg Bergfeld