

Congress of the United States
Washington, DC 20515

April 1, 2011

The Honorable Ken Salazar
Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Secretary Salazar:

We have serious concerns about the lawsuit and potential settlement agreement between the United States Department of the Interior and the Mishewal Wappo Tribe of Alexander Valley. In its lawsuit¹, the tribe seeks to have the court restore its federal tribal status. The tribe also seeks the taking into trust of “historically aboriginal land” situated within the geographic boundaries of Napa and Sonoma Counties, and a declaration that such lands are “restored lands” under the Indian Gaming Regulatory Act (IGRA). This determination would set the stage for the development of Indian gaming in these counties.

In particular, we are concerned with the possibility that this is an “invited lawsuit” by the Department of the Interior, after it was determined that you did not have the authority to review the merits of the tribe’s claim through an administrative process. Our understanding is that under a potential settlement, the government (through the Department of the Interior) will extend tribal recognition to, and acquire land in trust for the benefit of, a Native American group of Wappo tribal descent who claim ties to the terminated Alexander Valley Rancheria. In addition, the Department will deem the newly recognized tribe’s trust lands to be lands “restored” to a tribe that had been terminated by Act of Congress.

For the reasons described in this letter, we believe that it is inappropriate for the Department to execute this type of settlement agreement. We are not aware of an Act of Congress that authorizes you to agree to extend tribal recognition to this legislatively terminated group or to place land in trust for their benefit. In addition, the Supreme Court opinion in *Carcieri v. Salazar* limits your authority to recognize this tribe and acquire land in trust for it. In this ruling, the Department may not acquire land in trust under the Indian Reorganization Act (IRA) for a tribe not recognized and under federal jurisdiction on June 18, 1934. It is our understanding that on January 19, 2010, the Department advised the Chairman of the House Natural Resources Committee that it has not determined which tribes are affected by the *Carcieri* decision. Without such a determination, it is inappropriate for the Department to commit to acquiring lands in trust for the Mishewal Wappo. If such a determination has been made, however, we hereby request a copy of the formal legal determination and any and all supporting documentation for it.

¹ *Mishewal Wappo Tribe of Alexander Valley v. Ken Salazar* (Case No. 5:09-cv-02502-JW)

Therefore, when a tribe's claim dates back almost half a century and where your department is not able to dispense with such a claim through a specified and transparent process, we strongly believe that the proper place for redress is in Congress, not the courts. Failing submission of this matter to Congress, we request that your department vigorously defend against this action.

The stakes in this matter not only raise constitutional issues regarding the ability of the Executive Branch to essentially act to recognize a tribe terminated by Congress but serve to threaten the fundamental basis of the region's economy. Napa and Sonoma Counties have each gone to extraordinary lengths to protect their agricultural resources and preserve their world recognized viticulture. Specifically, in 1990, the voters of Napa County adopted Measure J², a unique, long-term agricultural preservation law. Under this voter approved initiative, no existing agricultural land may be re-designated for another purpose unless another vote is taken to permit it. The California Supreme Court upheld this voter approved initiative³ in 1995. With land use regulations like Measure J, the citizens of Napa County have imposed long-term restrictions on development intended to preserve agricultural and open space needed to sustain the County's wine-growing industry and heritage. The preserve has been essential in protecting the quality of wine in the Napa appellation and maintaining a culture that draws visitors from throughout the world.

Similarly, Sonoma County, through its General Plan, tax subsidies, and sales tax, has taken aggressive steps to preserve its own special agricultural industry. Its General Plan precludes the conversion of lands currently used for agricultural production to non-agricultural use. Property tax subsidies support the maintenance of lands for agricultural use. Finally, Sonoma County residents recently reauthorized a 20 year 1/4 per cent sales tax to be used exclusively for the preservation of agricultural lands and open space through the purchase of conservation easements and promotion of agricultural programs. At this time, there are no federal environmental protections for wine-growing regions in the United States that reflect the stringent terms and protections embodied in Sonoma's preservation efforts and Napa's Agricultural Preserve. Therefore, the only protections that exist for this extremely sensitive agricultural region from urbanization and growth are local government regulations. These regulations would not apply to newly acquired tribal lands taken into trust in the region.

In addition, the Sonoma and Napa Valley region is already home to five federally recognized tribes, one casino and two more in development. Due to the counties' zoning and designed city centered growth policies, the only lands available for the large gaming facility envisioned by the Mishewal Wappo's is in an agricultural area. The addition of yet another tribe, intent on building a large gaming facility, would fundamentally change the nature of this entire region. These type of facilities not only result in conversion of agricultural land but place serious growth inducing pressure on surrounding areas, ultimately changing the carefully planned land use scheme. This is a basic non-mitigatable land use conflict in these important viticulture areas which are the hallmark of the region.

The Mishewal Wappo's request for recognition and restored lands therefore come at the expense of Napa and Sonoma County's jurisdiction, planning, and significant expenditures to protect their

² In November 2008, the voters of Napa County approved Measure P, which extended Measure J's requirements to December 2058.

³ See *DeVita v. County of Napa* (1995) 9 Cal. 4th 763

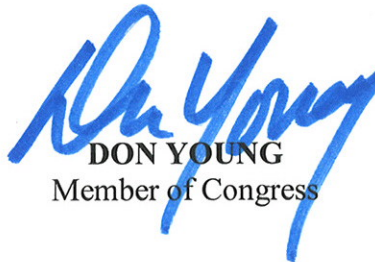
unique agricultural resources. Removing land from these counties jurisdiction undermines long range land use planning; strips away critical taxing and regulatory authority; and subjects adjoining landowners to the negative effects of the potential development of the "restored land" for gaming and related uses not currently allowed under each County's respective land use laws.


In the absence of federal law that allows for administrative action to authorize recognition of a terminated tribe, or would otherwise subject tribes to the strict local environmental policies and land use protections in this region, we respectfully request that you ensure that government interests are vigorously protected, all legitimate litigation defenses raised, and that you refrain from approving any tribal trust land for gaming purposes in Napa and Sonoma counties.

Thank you for your consideration. We would be pleased to discuss this matter further at your convenience.

Sincerely,


MIKE THOMPSON
Member of Congress


DON YOUNG
Member of Congress


LYNN WOOLSEY
Member of Congress