Santa Ynez Rancho Estates Mutual Water Company, Inc.
Post Office Box 297 -- Santa Ynez, CA 93460

October 10, 2013

Ms. Amy Dutschke, Regional Director
Dept. of the Interior, Bureau of Indian Affairs
Pacific Regional Office, Suite 2820
2800 Cottage Way
Sacramento, CA 95825

RE: Santa Ynez Band of Chumash Indians Fee-to-Trust Application for Camp 4

Dear Ms. Dutschke,

These comments on the above matter are filed by the Santa Ynez Rancho Estates Mutual Water Company, Inc., whose service area is immediately adjacent to the Camp 4 property in the eastern portion of the Santa Ynez Valley, Santa Barbara County, California.

THESE COMMENTS ARE FILED UNDER PROTEST :

First, these comments on this Fee-to-Trust application are filed under protest:

> The process being used to consider annexation of Camp 4 is based upon a materially false premise: that a TCA has been lawfully approved which includes the subject property. Numerous legal appeals have been filed (including ours) challenging this premise on multiple counts. *Until all legal issues are fully resolved regarding the TCA there should be no action taken on this fee-to-trust application (including no action on the associated EA).*

> The entire process in this case has been abusive to the public interest: 1) the secret and unprecedented approval of the TCA (no notice to the County or the affected property owners, either before or after the approval), 2) the short comment period on the 930 page EA which was extended only 15 days despite numerous requests for 30 to 60 day extensions, and 3) the short comment period on this Application which was extended only 15 days despite requests from the County of Santa Barbara and Congresswoman Lois Capps for a 60-day extension.

> Public records indicate that the BIA has taken three-quarters of a million dollars directly from the Chumash tribe to support their fee-to-trust applications.

In our opinion, these behaviors by the Bureau of Indian Affairs demonstrate bias, suggest bad faith, have at least the appearance of impropriety, and have unfairly disadvantaged the public's interest in this important matter. The process should start anew, with all new people involved.

THIS FEE-T0-TRUST APPLICATION SHOULD BE DENIED :

1) Approval of this Application would represent a complete mis-application of 1934 Act. This law was passed in the middle of the Great Depression with the well documented intent of helping impoverished tribes rise to the level of self-sufficiency. The clear goal of this Act is to get impoverished tribes off the welfare rolls --- not to get wealthy tribes off the tax rolls.

The net income to this 136 member tribe from the first of its two authorized casinos is reported to be $150 million dollars per year -- over $1 million per year for each tribal member. Even if all 1,300 alleged descendants were admitted to the tribe at once, the income to each would be well over $100,000 per year, nearly four times the average income in the County. Clearly, this tribe has reached and surpassed the goal of the 1934 Act. (Ironically, the sales pitch made to the community by this tribe during the initiative campaigns to allow Indian gaming --- which Santa Ynez Valley voters supported --- also was that it would allow them reach self sufficiency.)

The point here is not about limiting how much money the tribe may legally make --- the spin that the tribe likes to put on this point --- the point is that there are lawful limits to how much the tribe can make and still qualify for economic subsidies at the expense of the community.

2) Aggravating the above problem is the well-documented practice of the BIA taking money from wealthy tribes (i.e. the California Fee-to-Trust Consortium) and giving them preferential treatment in the processing of Fee-to-Trust applications. The effect of this is directly opposite to the intent of the Act: it allows wealthy tribes to pay to cut in line in front of poor tribes. Public records indicate that the BIA has taken three-quarters of a million dollars from the Chumash tribe to support their fee-to-trust applications. In our opinion this BIA behavior is beyond improper, it is shameful, and this application should be denied due to those circumstances.

3) This application not only fails to demonstrate the required "necessity" for housing, it actually proves beyond doubt the opposite: there is no need for housing that cannot be met without Fee-to-Trust privileges. Any tribe that can afford to buy $40 million worth of land, and plan to build 143 $2-3 million dollar homes (total cost $300-500 million dollars) is not in need of anything --- certainly not in need of hundreds of millions of dollars of public subsidy beyond the massive subsidies which they already receive.

4) In addition, as was written to the BIA on August 26, 2005 by Peter Siggins (Legal Affairs Secretary to Governor Schwarzenegger) in a letter regarding an earlier Chumash annexation request (letter attached) :

"A desire for additional land, however, does not render an acquisition of land "necessary" within the meaning of 25 C.F .R. section 151.3(a)(3). Nothing in the legislative history of 25 U.S.C. section 465 ("IRA" or "Section 465") suggests any Congressional intent for the Secretary of the Interior to take land into trust for a tribe in the absence of a demonstrable immediate need. To the contrary, that history establishes that Section 465 was enacted in response to the immediate need to provide land for homeless Indians for the purpose of creating subsistence homesteads,

consolidating areas within a reservation, for grazing and other similar agricultural purposes. (See House Report No. 1804, 73rd Cong. 2d. sess. (May 28, 1934) at 6-7; 78 Cong. Rec.at 9.269, 11,123,11,134,11,726-30, 11,743.) "

5) The tribes' market rate purchases of the two largest hotels in Solvang, and numerous other commercial properties in the Santa Ynez Valley, proves beyond doubt that there is no longer any "necessity" of Fee-to-Trust privileges for economic development reasons, either.

6) The Chumash claim to "aboriginal lands" is not supported by history or law. Unlike other areas colonized by Spain, Spain did not recognize tribal sovereignty in California due to the lack of presence of standing tribal governments. Neither did Mexico recognize tribal sovereignty in California when it succeeded in political authority. Neither did the United States in the Treaty of Guadalupe Hidalgo, nor when it admitted California into the Union. Under the Lands Claim Act of 1851 no Chumash land claims were upheld. A subsequent suit by the Catholic Church in 1853 did not validate any Indian claims to land around the missions. The 1897 quiet title suit, the source of the map used to assert the land claims in this Application, actually determined the opposite: the Chumash have no aboriginal claim to these lands.

It is incredible that the Western Regional Office of the BIA would attempt to re-write this much history, and reverse this much law, through a closed-door administrative declaration.

7) The assertion of need for "land banking" is not supported by the law. Again quoting the Peter Siggins letter (attached) : *"Neither the term nor the concept of "land-banking" for future generations of for future speculative needs appears anywhere in Section 465, the Department of Interior's regulations or the legislative history of either."*

8) Neither the County of Santa Barbara nor the State of California can afford the removal of this land from the tax rolls or the jurisdictional conflicts which will certainly arise. These impacts have not been adequately analyzed as required by the law, and this Application should be denied for those considerations. The Peter Siggins letter again:

Recognizing these practical concerns, Congress has provided a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area's governance and well being. Title 25 U.S.C, § 465 authorizes the Secretary of the Interior to acquire land in trust for Indians and provides that the land "shall be exempt from State and local taxation." See Cass County v. Leech Lake Band of Chippewa Indians, 524 U.S. 103,114-115,118 S.Ct. 1904,141 L Ed.2d 90(1998). The regulations implementing §465 are sensitive to the complex interjurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory. Before approving an acquisition, the Secretary must consider, among other things, the tribe's need for additional land; "(t]he purposes for which the land will be used";

"the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls"; and "[j]urisdictional problems and potential conflicts of land use which may arise." 25CFR§ 151.10(2004).

Every development on Camp 4 proposed by the tribe to date has represented conflicts with the County's Comprehensive Plan and with the Santa Ynez Valley Community Plan. There are tremendous tax implications for local government (and the State) should this property be taken into trust.

The 136 member tribe, which operates a casino generating $150 million dollars per year in profit, has already received over $120 million dollars in state and local tax breaks over the past ten years on activities on the existing reservation.

Just the 143 homes proposed in this Application conservatively represent $300 million dollars of property off the tax rolls --- costing local government $3.6 million in the first year, over $40 million in the first ten years, and over $300 million in the first 50 years of a forever deal.

Conservative estimates of the unreimbursed services which must still be provided by the County --- which must be made up for by taxpaying members of the public --- for just the development already proposed by the tribe at one time or another on Camp 4 are over one billion dollars in just the first 50 years of this perpetual arrangement. And, consider that this already proposed development uses less than one half of the 1,400 acre Camp 4 property.

Since the less fortunate are the primary beneficiaries of government services, the ironic result is that these tax breaks for this tribe --- the richest one-tenth of 1 percent in our community (at $1 million per year each) --- come primarily at the expense of our schools and those members of society who can afford it the least.

9) The cumulative impact of this precedent on the State of California must be considered, and the Application should be denied for this reason. too. First, consider the above financial impacts multiplied by over 100 federally recognized tribes in the state which will undoubtedly demand equal treatment.

The magnitude and foreseeable impacts from this application to annex 1,400 acres -- over 2 square miles -- of land in the Santa Ynez Valley go well beyond the local impacts. Again, the Peter Siggins letter (attached) is quoted:

Approval of the Tribe's application absent a showing of immediate need or necessity could have potentially severe adverse cumulative impacts on California. There are 108 federally recognized tribes in the State. If this Tribe is permitted to acquire land in trust when it has no immediate need for that land, other tribes in the State may claim entitlement to the same treatment by the Department of the Interior pursuant to the provisions of 25 U.S.C section 476, subdivisions (f) and (g) which provide that no agency of the United States shall make a determination under the

IRA that "classifies, enhances, or diminishes the privileges and immunities available to an Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes" and that any decision that does discriminate in that fashion "shall have no force or effect." Allowing up to 108 federally recognized tribes in California to place into trust land for which they have an aboriginal claim could involve more than 75 million acres -- the amount of land many tribes in this State have claimed would have been theirs had the United States ratified 19th century treaties granting that acreage. Congress rejected those treaties because of the impact that granting tribes that amount of land would have had on California in the 1850's. Whatever impact those treaties might have had on California in the 19th Century pales in comparison to the impact of contemporary removal of a comparable amount of land from the State's authority over land use and taxation --- both of which are fundamental attributes of its sovereignty. Such a result would constitute federal interference with the powers reserved to the State in a manner patently at odds with the intent of the Tenth Amendment.

CONCLUSION

The Santa Ynez Rancho Estates Mutual Water Company, Inc. respectfully requests that the BIA deny the Fee-to-Trust application for Camp 4 for the above reasons. While it is strongly desired by the tribe for obvious reasons, and while it appears to be strongly desired by the Western Regional Office of the BIA, it is not consistent with the law.

We leave you with the following:

"We are a nation of laws, not of men."
John Adams, A Defense of the Constitutions of Government, 1787

"When I use a word I choose it to mean precisely what I choose it to mean."
Humpty Dumpty, Through the Looking Glass, 1871

Respectfully,

Robert B. Field, President
on behalf of the Board Of Directors
Santa Ynez Rancho Estates Mutual Water Company, Inc