Stand Up For California!

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April 8, 2005

Clay Gregory –Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

RE: Comment on Gaming Land Acquisition Application – Scotts Valley Band City of Richmond

Dear Mr. Gregory:

National and statewide media, state and federal lawmakers are closely watching the decision makers at the Bureau of Indian Affairs. California leads the off-reservation tribal gaming debate because issues of restored and landless tribes are paramount in California. Decision-makers must concern themselves with the recent judicial guidance steering the legal requirement for land to be taken into trust in the decision by the U. S. Supreme Court ***Sherrill vs. Oneida.*** The very integrity of the decision-making and policy-making process must be respected because of the far reaching effects they have on cities, counties and states. This letter sets forth the comments of Stand Up For California regarding the issue of **"restored lands"** for gaming by the Scotts Valley Band of Pomo Indians in the City of Richmond.

In 1923, the Reno Indian Agency ("Agency") had jurisdiction over Indian reservations, colonies, villages and scattered bands of homeless Indians in Nevada and Northern California not under the superintendence of any other jurisdiction. The Agency and its entire personnel gave considerable time surveying and compiling data on populations, locations and needs of the various Indian reservations, colonies, villages and scattered bands of homeless California Indians as presented in its annual report of 1923.

The 1923 records of the Agency indicate approximately 600 Indians; comprising nine groups were actually residing in Lake County, California. One of nine groups, the Scotts Valley Band, was reported as having a population of 60 persons. A tract of 56.58 acres was purchased for the Scotts Valley band in 1911 at a cost of $2,900.00, with funds appropriated under the acts of June 21, 1906 (31 Stat., 325-333), and April 30, 1908 (35 Stat., 70-76**) "to purchase for the use of the Indians in the State of California.**" This tract of land was established on the traditional homeland of this group of Indians. (Senate

Report 1874, June 22, 1958) In 1923 there were 28 families represented in this band, including 18 minors.

- The proposed casino location in the City of Richmond is over 100 miles from the established traditional homeland of the Scotts Valley Band.

By 1933, the number of Indians using this land for home sites had dropped to 26, and in 1958 the number was 32, although 3 of the people having assignments were not living on the land. There is no record of a current roll of membership and the group was not formally organized as a tribe, but they acted as a group in making decisions about their land, much like a homeowners' association. It should be noted that neither this group nor any other Rancheria Band was required to meet the criteria of the recognition process; rather tribal groups were administratively created by BIA officials for ease of management of federal lands.

It appears that the Pacific Regional Office of the BIA violated the findings in a 10th Circuit case ***Cherokee Nation of Oklahoma vs. Gale Norton*** ("Cherokee Nation") (November 16, 2004) in placing these unorganized Rancheria groups on the federal recognition list, supposedly in compliance with the 1994 John McCain Legislation.

- In Cherokee Nation, the 10th Circuit rejected the 1996 determination regarding the Delaware's finding that Indian tribes may be recognized only by (1) an Act of Congress, (2) the Part 83 acknowledgment process or (3) a decision of a federal court. The court stated: "Agencies ... must follow their own rules and regulations. The DOI used a procedure heretofore unknown to the law – 'retract and declare' – to purportedly re-recognize the Delaware's. In so doing, the DOI's actions were arbitrary and capricious. The agency simple elected not to follow the Part 83 procedures for recognizing an Indian tribe and, furthermore, did not even properly waive application of those procedures. See 25 C.F.R. § 1.2. We accordingly hold unlawful and set aside the DOI's 1996 final decision. 5 U.S.C. § 706(2)(A). Any action taken on the agency's 1996 final decision is void. 'Further comment on this case is unnecessary.' [citing an 1894 Supreme Court decision]"

The Technical Corrections Act of 1994, Section 5, Pub. L. 103-263, 108 Stat. 707 (May 31, 1994) does not allow acknowledgment to be met.[1] The hasty action of the Pacific Regional Office in moving land base groups to federal recognition is causing havoc in California and has initiated the proliferation of off-reservation gaming. (Also see: ***United Houma Nation vs. Bruce Babbitt*** (October 28, 1996).the BIA to misconstrue the amendment to avoid application of the required criteria for acknowledgement.

[1] Before the BIA published its Proposed Findings on United Houma Nation's (UHN) petition, Congress enacted the Technical Corrections Act of 1994 amending section 16 of the Indian Reorganization Act of 1934, 48 Stat. 987 (June 18, 1934). UHN construes these amendments to preclude the BIA from making any regulatory distinctions between historic and non-historic tribes, thus rendering void the criteria that trouble its petition in 25 CFR part 83 7(e). However, the BIA interprets the amendments to have no effect upon the acknowledgment process.

By a resolution on September 29, 1955, the Scotts Valley Band asked that they be given fee-title to their individual shares of this tract. They requested legal assistance to form an entity to take over and manage a water system and asked that the Rancheria be surveyed so that each assignee may have a legal description of his plot.

The total cost of this request was $10,500.00. The remedy the Scotts Valley Band now seeks is a determination of "restored lands" in the City of Richmond. The City of Richmond was chartered on August 7, 1905, one year before Congress even appropriated money for the purchase of federal lands for homeless Indians of no specific tribal affiliation in California and six years before the Scotts Valley Band was administratively grouped or offered use of federal lands for a home site. On the chartering of the City of Richmond there was a population of 2,150 residents and today that population has grown to 101,373(source: CA State Dept of Finance as of January 1, 2003). The racial demographics of the city indicate a 0.4 % urban American Indian and Alaska Natives. In reality, the Scotts Valley Band is asking for a remedy of a multi-million dollar casino asserting that this is equitable and reasonable relief for the termination of their status as Indians which the group voluntarily asked for by way of resolution on September 29, 1955.

- In other words, the unorganized tribal group voluntarily relinquished any claim to governance over their lands in Lakeport, Lake County over 50 years ago.

In the Stipulation for entry of Judgment, dated March 15, 1991, ("Stipulation") the federal defendants agreed to accept in trust land **"outside the boundaries"** of the former Rancheria which was currently owned by certain Indians. However the Stipulation restricts these outside properties to any fee interests in trust or former trust allotments issued to successors in interest of the Rancheria. The City of Richmond is outside of the purview of this stipulation. Thus the Scotts Valley Band is in need of a section 20 concurrence from California's Governor.

Clearly the non-tribal population of the City or Richmond the County of Contra Costa and the regional area have justifiable expectations that the land remains similar in character and that if changes regarding zoning, jurisdiction and critical health and safety issues regarding a change in the governing authority-- this overreaching federal decision cannot be made behind the closed doors of the BIA.

For 100 years no Indian lands have existed in this City or regional area (i.e. all land has been subject to State law). Common sense dictates that it is unreasonable to place a new political entity which enjoys immunity to civil liability and tax exemption in the middle of an urban center that for 100 years has been subject to California and local law and in the private ownership of generations of private citizens. The very nature of tribal sovereignty will impact and erode the cultural, political and economic systems of the regional area.

Competitors, who include financially strapped cities, developers, consultants, gaming investors, gaming machine manufacturers, and unscrupulous gaming investors, seek to

circumvent regulatory safeguards of the concurrence of the Secretary of the Interior and the Governor of California and the review and scrutiny and regulatory oversight of the Office of Indian Gaming Management and the National Indian Gaming Commission.

Please accept and give serious consideration to these comments from Stand Up For California, keeping in mind the true purpose for which IGRA was enacted. A purpose contrary to how IGRA is now being utilized by tribes and their investors to promote gaming in communities and states that would never have permitted gaming previously. This is not what Congress envisioned.

The Scotts Valley Band of Pomo is not a restored lands determination, rather plain and simple; this is a section 20 concurrence which Governor Schwarzenegger has already denied.

Sincerely,

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