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COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
CHAIRMAN, SUBCOMMITTEE ON THE COAST
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Duncan Hunter
U.S. House of Representatives
50th District, California

August 30, 2013

Amy Dutschke, Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way, Room W-2820
Sacramento, CA. 95826

Dear Director Dutschke:

I am enclosing correspondence sent to your office from my constituents of the Dehesa Valley Community Council regarding their appeal to the Bureau of Indian Affairs' Notice of Decision to place approximately 17.5 acres of off-reservation real property into federal trust for the Sycuan Band of the Kumeyaay Nation. I am aware that you have discussed this specific issue with my staff and I appreciate the expedited response your office provided in answering some general policy and procedural questions related to this matter.

The concerns of the Dehesa Valley Community Council are fully outlined in their appeal and my action in forwarding to you is to ensure it is received and fully considered. Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me directly, or Michael Harrison in my office at 619-448-5201.

With best wishes.

Sincerely,

A handwritten signature in blue ink, appearing to read "Duncan Hunter".

Duncan Hunter
Member of Congress

DH/mrh
Enclosure

Dehesa Valley Community Council, Inc.
P.O. Box 1631
El Cajon, CA 92022
protectdehesa@aol.com

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Amy Dutschke, Regional Director
Pacific Regional Office
Bureau of Indian Affairs
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**RE: APPEAL TO THE INTERIOR BOARD OF INDIAN AFFAIRS ON THE SYCUAN
BAND OF THE KUMEYAAYNATION
NOTICE OF DECISION OF AUGUST 1, 2013**

Dear Interior Board of Indian Affairs, Assistant Secretary Indian Affairs Washburn and Regional Director Dutschke,

The *Dehesa Valley Community Council, Inc.* (DVCC) provides this timely notice to all interested parties of its appeal of the Acting Regional Director's August 1, 2013 Notice of Decision to take approximately 17.5 acres in trust on behalf of the Sycuan Band of Kumeyaay Nation (the Tribe).

A copy of Acting-Regional Director Bearquiver's August 1, 2013 notice of decision is attached hereto as Exhibit A.

The August 1, 2013 Notice of Decision purports to take into trust privately held easements on private property not within the 17.5 acres owned in fee simple by the Tribe. Such a taking violates the Fifth Amendment to the U.S. Constitution, as it is being attempted without due process and just compensation. The easements purportedly being taken into trust makes the title of each of the privately held parcels on which the remainder of the easements lie, unmarketable,

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and therefore a taking, or an inverse condemnation, without due process and just compensation. See for e.g., *Proschold v. USA* in the Northern District of California.

See, the description in the NOD of PARCEL A1 (AN EASEMENT AND RIGHT OF WAY FOR ROAD AND PRIVATE UTILITY PURPOSES OVER THE NORTHERLY 20 FEET OF PARCEL 1 OF PARCEL MAP NO. 5227, AND THE EASTERLY 20 FEET OF PARCELS 1 AND 2 OF SAID PARCEL MAP NO. 5227).

See also, PARCEL 3 of PM NO. 5227 and PARCELS 1 and 2 of PM NO. 5393), and PARCEL A2 (THE SOUTHERLY 20 FEET OF PARCEL 2 OF PM NO. 3915), PARCEL C1, PARCEL 1, and PARCEL 2.

Moreover, the Supervisory Realty Specialist in the Pacific Regional Office of the BIA has just recently admitted on August 26, 2013, that the August 1, 2013 notice of decision contains inaccurate descriptions of the property to be taken into trust.

For example, there is no recorded easement described as PARCEL C3 (AN EASEMENT FOR INGRESS AND EGRESS, IN, OVER, ALONG AND ACROSS THE SOUTHELY 20 FEET OF PARCEL 2 OF PARCEL MAP NO. 5227, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAID MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, OCTOBER 21, 1976, AS INSTRUMENT NO. 75-178658 OF OFFICIAL RECORDS). With regard to this non-existent easement, DVCC has not been provided the requisite time and due process to file its objections to such an improper taking.

The NOD also has documentation errors in PARCEL C2 (AN EASEMENT FOR INGRESS AND EGRESS, IN, OVER, ALONG, AND ACROSS THE NORTHERLY 20 FEET OF PARCEL L OF PARCEL MAP NO. 5227, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAID MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, OCTOBER 21, 1976, AS INSTRUMENT NO. 75-178658).

Purporting to take such privately held easements into trust also violates 25 C.F.R. 151, et seq., because the Secretary did not require the lawful elimination of all such liens, encumbrances, and infirmities that make title to the land unmarketable, and because the private landowners of such easements have not consented to the elimination of such easements.

The United States Supreme Court has made it abundantly clear that DVCC has standing pursuant to the decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak* to challenge such an arbitrary, capricious and illegal BIA decision under the Administrative Procedure Act. DVCC's interests are directly and indirectly, economically, environmentally and aesthetically, adversely affected by this purported decision to take land into trust. Therefore, DVCC Appeals the BIA's decision of August 1 2013 for all of the reasons submitted in DVCC's November 17, 2011 letter to the Pacific Regional Office of the Bureau of Indian Affairs.

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Such an unlawful taking also violates the Tenth Amendment of the U.S. Constitution, and constitutes federal interference with the powers reserved to the State in a manner patently at odds with the intent of the Tenth Amendment. Nor has the State consented to such a taking by the federal government of state land under Art. 1 Section 8, cl. 17 of the U.S. Constitution. Once these formally public domain lands were acquired by the United States from Mexico and then conveyed to California and private ownership in 1850, the United States retained no regulatory authority over such public domain lands. *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, 176 (2009).

“A long line of cases have consistently held that part of the residue of sovereignty retained by the states, a residue insured by the Tenth Amendment, is the power to determine...who may be made beneficiaries,” of a deed to the United States. *U.S. v. Burnison* 339 U.S. 87, 91-92 (1950). As Thomas Jefferson explained on February 15, 1791, it would be “a prostitution of laws, which constitute the pillars of our whole system of jurisprudence,” if the Constitution were to be interpreted to allow the federal government “for a shade or two of convenience, more or less, [to] be authorized to break down the most ancient and fundamental laws of the several states.” *The Political Writings of Thomas Jefferson* (1993), Thomas Jefferson Foundation Inc.) at 104. “Without the State’s ‘consent’ The United States does not obtain the benefits of Art. I, Section 8, cl. 17, its possession being simply that of an ordinary proprietor.” *Paul v. U.S.* 371, U.S. 245, 264 (1963).

For all of these reasons the Sacramento Acting-Regional Director’s August 1, 2013 notice of decision must be reversed.

Sincerely,

Lory Walls, President
Dehesa Valley Community Council, Inc.
(619)445-5472