

Stand Up For California!

“Citizens making a Difference”

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

July 14, 2021

The Honorable Gavin Newsom
Governor
State of California
1303 10th Street, Suite 1173
Sacramento, California 95814

RE: Tejon Indian Tribe – Proposed Casino in Kern County

Dear Governor Newsom:

On behalf of Stand Up For California! (“Stand Up”),¹ I am writing to express strong opposition to the Class III casino project proposed by the Tejon Indian Tribe (“Tejon”) in Kern County, California. In a letter sent to you on January 8, 2021, the U.S. Department of the Interior indicated that the Assistant Secretary—Indian Affairs has initially approved the Tejon casino project and now requests that you concur in her determination, pursuant to the federal Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(A).²

Stand Up supports the ability of all Native American governments to take advantage of economic development opportunities in a manner equitable to local communities and nearby tribes. However, the Tejon have not honored the traditional process followed by other California tribes and Indian groups in seeking recognition by the Interior Department and in obtaining approval for a casino under federal law. There are also significant environmental problems with the Tejon proposal that have not been addressed or adequately mitigated. For all of these reasons, Stand Up urges you to (1) decline to concur in the initial federal approval of this casino project, (2) decline to negotiate and execute a Class III Compact with the Tejon Tribe, and (3) send this application back to the Interior Department for reconsideration by the Biden Administration.

In greater detail, here are our views on these topics:

1. Improper Federal Recognition of the Tejon Tribe. The historical record is clear that the Tejon Indian Tribe was never formally recognized as a tribal government until 2012, when Assistant Secretary—Indian Affairs Larry Echo Hawk took the unusual step of waiving the acknowledgment regulations

¹ Stand Up For California! (“Stand Up”) is a statewide organization with a focus on gambling issues affecting California, including tribal gaming, card clubs, horse racing, satellite wagering, charitable gaming, and the state lottery. For more than twenty (20) years, Stand Up has been a leading opponent of off-reservation Indian gaming in California, in addition to advocating for other federal and state policy positions. More information can be obtained on Stand Up’s website: <https://www.standupca.org/>.

² See Letter from Tara Sweeney, Assistant Secretary – Indian Affairs, to The Honorable Gavin Newsom, Governor of California, January 8, 2021.

in 25 C.F.R. 83 and “reaffirming” the government-to-government relationship between this group and the United States.³

This decision by the Assistant Secretary to completely ignore the federal Part 83 acknowledgment process and waive the regulations for this group was highly controversial and resulted in a negative report in 2013 by the Inspector General of the Interior Department.⁴ The Inspector General found that this reaffirmation decision did not follow any defined regulatory process and unfairly placed this group ahead of other Native groups with pending acknowledgment petitions under Part 83 of Interior regulations.⁵

In fact, research by the Interior Department’s Office of Acknowledgment revealed that as many as 10 other Native groups had “potential historical, genealogical, and ancestral claims to the original Tejon Indians.”⁶ Pending petitions for acknowledgment by these groups were ignored and the Inspector General determined they were completely “left out of the process.”⁷

Additionally, since federal funding is determined by the number of enrolled members a tribe has, the decision by the Assistant Secretary to bypass the Part 83 acknowledgment process did not permit Interior to identify tribal members through an organized process, with appropriate oversight by the Department.⁸

This reaffirmation decision was so concerning to the Department that it issued a policy statement in 2015 requiring that all subsequent requests for federal acknowledgment by an Indian group—including a request for reaffirmation or some other alternative basis—must be made under Part 83, with no exceptions.⁹

2. Non-Compliance with *Carciere v. Salazar*. Under the federal Indian Reorganization Act (“IRA”), the Secretary of the Interior is authorized to acquire land and hold it in federal trust for “any recognized tribe now under Federal jurisdiction.”¹⁰ In *Carciere v. Salazar*, the U.S. Supreme Court held that the term “now under Federal jurisdiction” unambiguously refers to those tribes that were under the jurisdiction of the United States when the IRA was enacted in 1934.

This status is distinguishable from a tribe or Indian group living on a state reservation or under state jurisdiction.

The group that was restored to federal recognition as the Tejon Indian Tribe in 2012 cannot comply with this IRA requirement, as these Tejon Indians were living under the jurisdiction of the State of California in 1934. Therefore, under the ruling in *Carciere*, the Interior Department lacks authority to take land into federal trust for this Tribe.

The historical record is very complete on this point. Since at least 1873, this group of Indians of Tejon descent lived on the Tejon Ranch, which has been privately owned and under State jurisdiction since shortly after the California Claims Act was passed by Congress in 1851.¹¹ Over the subsequent years, this group

³ See Letter from Larry Echo Hawk, Assistant Secretary—Indian Affairs, to The Honorable Kathryn Montes Morgan, Chairwoman, Tejon Indian Tribe, January 6, 2012.

⁴ See U.S. Department of the Interior, Office of the Inspector General, *Investigative Report of the Tejon Indian Tribe*, January 9, 2013.

⁵ *Id.* at 1.

⁶ *Id.* at 3.

⁷ *Id.* at 1.

⁸ *Id.* at 4.

⁹ See 80 Fed. Reg. 37,538 (July 1, 2015).

¹⁰ See 25 U.S.C. § 5129.

¹¹ California Claims Act of March 3, 1851, 9 Stat. 631.

refused repeated efforts to move to the Tule River Reservation, or to move to lands under federal jurisdiction and supervision.

A land claims case involving the Tejon Ranch was brought in 1920. Four years later, the U.S. Supreme Court confirmed that the Tejon Ranch was under State, and not federal, jurisdiction and that the Tejon Indians had lost and abandoned any aboriginal title rights to this land.¹²

Despite the Court's ruling in 1924, this group of Tejon Indians chose to continue to live under State jurisdiction on these privately-owned lands and their status had not changed as of 1934, when the IRA was enacted.

This historical record has been confirmed through Interior Department documentation, such as this internal Interior Department letter written by Charles Burke, the Commissioner of Indian Affairs in 1925:

The Tejon Indians have no property held in trust; they do not reside on a reservation, but on privately-owned land belonging to the Tejon Ranch Company; they belong to no tribe with which there is an existing treaty; they have adopted the habits of civilized life; and have become citizens of the United States by virtue of an act of Congress. ... It is thus apparent that the Tejon Indians have the status of non-ward citizens of the state; that present Federal appropriations cannot be used for their relief; and that responsibility therefor rests upon the local authorities.¹³

This status of the Tejon Indians was confirmed again by a letter written by the Secretary of the Interior in 1930:

Correspondence in our files indicates that the Indians of the Tejon Rancho are free to do as they please without let or hindrance in regard to the privately owned lands which they occupy. ... [These Indians] have not made any request or demand that lands be purchased for them or that conditions be changed, consequently, I question the wisdom of disturbing them in their present occupancy of the privately owned lands or in any way disrupting their evidently orderly and peaceful mode of living.¹⁴

Additionally, in March of 1938, the status of these Indians living on the Tejon Ranch was once again confirmed in a letter sent by the Assistant Commissioner of Indian Affairs to a local attorney in Bakersfield. The Assistant Commissioner stated in his letter that "the owners of the El Tejon Rancheria permit the Indians to reside peacefully on the lands occupied by them for a rental of \$1.00 per year, [hence] it is not believed that the existing relationship should be disturbed at this time."¹⁵

¹² See *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 483 (1924) ("[This Court] said there could be no doubt of the power of the United States ... to provide reasonable means for determining the validity of all titles within the ceded territory, to require all claims to lands therein to be presented for examination, and to declare that all not presented should be regarded as abandoned.")

¹³ Letter from Charles H. Burke, Commissioner of Indian Affairs, U.S. Department of the Interior, to Mr. L.A. Dorrington, Superintendent, Sacramento Agency, Bureau of Indian Affairs, U.S. Department of the Interior, December 30, 1925.

¹⁴ Letter from the Honorable Ray Wilbur, Secretary of the Interior, to The Honorable Charles Curtis, Vice President of the United States, June 26, 1930.

¹⁵ Letter from William Zimmerman, Assistant Commissioner of Indian Affairs, U.S. Department of the Interior, to George W. Hurley, Esq., March 28, 1938.

It is clear from this history that the Indians of Tejon descent lived on private lands within the Tejon Ranch for many decades, including, and most importantly, the ten-year period from 1924-1934. These Indians chose to submit themselves to State jurisdiction during this entire period, and, therefore, cannot meet the *Carciari* requirement standard of being “under federal jurisdiction” in 1934.

3. Unaddressed Environmental Issues. As I discussed in the attached letter to the Interior Department of November 23, 2020, the casino project proposed by the Tejon will negatively impact the local environment. For some reason, the Department has refused to take appropriate steps to mitigate these impacts and their potential harm to the surrounding community.

Among a variety of environmental problems, the Final Environmental Impact Statement issued by the Department failed to address the following issues:

- The Department failed to adequately evaluate the water resources issues and whether there will be sufficient groundwater capacity to support a casino facility of this size and scope. The current site only utilizes surface water contracts to meet agricultural water needs. There has not been sufficient substantiation that off-site groundwater wells and other groundwater users would not be harmed by the daily water needs of this facility and its supporting activities.¹⁶
- The Department failed to rigorously evaluate the seismic risks of this project, as the casino would be located within 240 feet of the active White Wolf fault and within only a few miles from at least two other fault zones.
- The Department chose a site for the casino that is within a 100-year floodplain, instead of selecting an alternative location outside of a floodplain. Concerns over this decision were raised on multiple occasions by the U.S. Environmental Protection Agency, which recommended against locating the casino at the Mettler site and advocated for an alternative site outside of a floodplain.¹⁷
- The Department failed to properly analyze the risks of flooding or stormwaters impacting the casino and whether such events could cause significant injuries or deaths in a catastrophic occurrence. For example, ground subsidence in the area has

¹⁶ See, e.g., Letter from Gordon L. Nipp, Ph.D, Vice-Chair, Sierra Club (Kern-Kaweah Chapter), to Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, at 12, July 27, 2020 (“[T]he DEIS’s discussion of the Project’s impact on groundwater is false and misleading.”)

¹⁷ Letter from Jean Prijatel, Manager, Environmental Review Branch, U.S. Environmental Protection Agency, to Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs, at 1, July 22, 2020 (“Based on our review of the DEIS, we continue to have concerns regarding floodplain development. In addition to impacts to floodplain values, including reduced floodplain capacity, the location would require importing a large amount of fill to raise the site 2.5 feet to be sufficiently out of the floodplain. Trucking this large amount of fill would cause air quality impacts in an extreme ozone nonattainment area that could be avoided with selection of the Alternative B site.”). See also Letter from Jean Prijatel, Manager, Environmental Review Branch, U.S. Environmental Protection Agency, to Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs, at 1, November 18, 2020 (“We continue to advise against development in a floodplain and continue to recommend against the use of the 100-year storm event peak flows when planning for infrastructure in the floodplain since this would not accommodate the intense atmospheric river-induced precipitation extremes that are predicted to occur in California in the coming decades.”).

been documented to reach up to 8 feet, yet the Tribe proposes to only raise the critical project elements by a much smaller level of freeboard above ground level.

In addition to these issues, the casino proposed by the Tejon Tribe would create direct and negative economic impacts on gaming facilities owned by at least five California tribes: Santa Rosa Tachi, Tule River, Chumash, San Manuel, and Morongo. This off-reservation casino would disrupt the careful political balance of tribal gaming in California, in which the proponents of Propositions 5 and 1A promised the voters in the State that tribal gaming would be limited to existing reservations.

For all of these reasons, Stand Up urges you to (1) decline to concur in the initial federal approval of this casino project, (2) decline to negotiate and execute a Class III Compact with the Tejon Tribe, and (3) send this application back to the Interior Department for reconsideration by the Biden Administration.

If you would like to discuss these issues in further detail, please feel free to contact me at your convenience.

Sincerely,



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Attachment: Nov. 23, 2020, Stand Up letter of comment FEIS