UNITED STATES DEPARTMENT OF THE INTERIOR

Interior Board of Indian Appeals

IN RE FEDERAL ACKNOWLEDGMENT OF THE JUANEÑO BAND OF MISSION INDIANS, ACJACHEMEN NATION	) REPLY TO BELARDES) MOTION FOR INTERESTED) PARTY STATUS AND ANSWER) OF THE CALIFORNIA CITIES) FOR SELF RELIANCE JOINT) POWERS AUTHORITY)) Docket No. IBIA 11-124)) August 15, 2011

The Juaneño Band of Mission Indians, Acjachemen Nation (the "Nation") responds to (1) the Motion For Interested Party Status (25 C.F.R. Section 83.1) (the "Belardes") and (2) Answer Of The Interested Party, California Cities For Self Reliance Joint Powers Authority (the "JPA")[1].

I. Introduction

By Order entered on June 28, 2011, the Board established a schedule calling for motions for interested party status to be filed on or before July 28, 2011 and for the Nation to file a response by August 15, 2011. Belardes and JPA filed for interested party status.

Section 83.1 defines "interested party" as

> any person, organization or other entity who can establish a **legal, factual or property interest** in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. "Interested party" includes the governor and attorney general of the state in

[1] The JPA submits an "answer to motion of the petitioners ..." The regulations do not allow for answer briefs to a request of reconsideration. Its answer brief should be stricken and it denied interested party status.

which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized tribes and unrecognized Indian groups that might be affected by an acknowledgment determination. (emphasis supplied).

Belardes and JPA have failed to demonstrate a legal, factual or property interest in the Final Determination. The definition of "interested party" at 25 CFR § 83.1 was revised in the 1994 amendments to the regulations "to refer to third parties with a **significant** property or legal interest." See 59 Fed. Reg. 9280, 9283 col. 2, Feb. 25, 1994 (emphasis added); *Match-e-be-nash-she-wish Band*, 33 IBIA 291 (1999). A claim on behalf of another does not suffice. *In re the Acknowledgment of the Golden Hill Paugussett Tribe*, 32 IBIA 216, 220 (June 10, 1998) (rejecting "interested party" status for attorneys who represented others in land claims).

Determining interested party status should be guided by a functional analysis that examines "the nature of the asserted interest, the relationship of [the proponent of standing's] interest to the functions of the agency, and whether an award of standing would contribute to the attainment of these functions." *Preservation of Los Olivos, v. United States Department of the Interior,* 635 F.2d 1076, 1092 (C.D. Cal. 2008), citing the concurring opinion in *Koniag, Inc., Village of Uyak v. Andrus*, 580 F.2d 601 (D.C. Cir. 1978). Such approach includes the following factors, among others: (1) the nature of the interest asserted by the potential participant; and (2) the relevance of this interest to the goals and purposes of the agency. *Id.* at 616. The overriding consideration is that "administrative standing should be tailored to the functions of the agency..." *Id.*

II. Belardes has failed to Establish a Legal, Factual, or Property Interest in the Acknowledgment Decision for the Nation

At the outset, Belardes was an interested party before the Department in the acknowledgment proceedings conducted by the Assistant Secretary – Indian Affairs. The motion

states that "Belardes is the original Juaneño Band of Mission Indians to receive recognition as a tribe from the State of California."[2] Thus, it alleges—but fails to prove—that it constitutes an Indian group. Although 25 CFR § 83.1 states that "unrecognized Indian groups that might be affected by an acknowledgment determination" are included within the meaning of interested party, this statement does not mean any unrecognized Indian group is automatically granted interested party status. Importantly, first, Mr. Belardes and his group may be entirely non-Indian or a substantially non-Indian group. In fact, Mr. Belardes was removed from the Nation's membership roll in 1997 and subsequently it was proven that he had no Indian ancestry. The acknowledgment regulations require the group to be Indian. Second, the motion may have been submitted by only Mr. Belardes. If so, then it's not a group. Nowhere in the Belardes motion does it establish by evidence in any form that Belardes is an interested party.

In fact, Belardes must show that its members (if any actually exist beyond David Belardes) have standing. *See,* 25 CFR § 83.1 defining "Indian group" as any Indian group unacknowledged as a tribe. *See*, *Hunt v. Washington State Apple Advertising Commission*, 432 U. S. 333, 343 (1977) (emphasis supplied); *Members v. Acting Great Plains Regional Director*, 50 IBIA 46, 53 (2009). Belardes has failed to show who are members of his group and if they have standing by any type of evidence.

The motion states further that "Belardes is also the original petitioner for Petitioner #84" and that "[t]he final determination also refers to Belardes and members of Belardes (e.g. the Stanfield family) as an integral component of its reasoning and holding." And, it recounts that in the Proposed Findings: "'The Department designated the Belardes-led group Petitioner #84A

[2] The Nation submitted to the California State Assembly Resolution of 1993 as evidence in the petition. It does not belong to Belardes, but to the Nation.

(JBA) ...'" The group, if in fact a group[3] as no evidence was provided as to its membership, would purportedly be composed of individuals who are part of the Nation.[4] The Board has routinely found that an individual member or members of a petitioner group lack standing to file requests for reconsideration. *See, In Re Federal Acknowledgment of the St. Francis/Sokoki Band of Abenakis of Vermont*, 46 IBIA 13, 14 n. 4 (2007) *citing In Re Federal Acknowledgment of the Nipmuc Nation,* 41 IBIA 96 (2005) and *In re Federal Acknowledgment of the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians*, 41 IBIA 100 (2005). The reason is that "[i]ndividuals, as members of a petitioning group, do not have personal, protectable 'interest' in an acknowledgment determination that is encompassed within the regulatory definition of 'interested party.'" Any interest as members is derived from the Nation and is represented by the Nation's own participation in this proceeding. *See Nimpuc Nation,* 41 IBIA at 98. From a functional standpoint, the Nation is in a position to represent whatever interests Belardes may possess. Thus, Belardes has failed to show with specificity that it would or might be affected by the acknowledgement decision beyond any effect on it as purported members of the Nation. *See In re Federal Acknowledgment of Shinnecock Indian Nation,* 52 IBIA 127, 130 (2010). Again, we stress that Mr. Belardes may have filed it on his own behalf as an individual since the motion was unaccompanied by any form of evidence, such as a resolution signed by the governing body of his group.

Indeed, its approach is similar to its approach before the Assistant Secretary – Indian Affairs as reflected in its request for "the opportunity to submit comments and evidence in conjunction with that requests for reconsideration ..." filed by the Nation and "to be kept

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[3] Belardes mentions the Stanfield family. It appears that Mr. Belardes is attempting to insinuate a false construct that a group exists beyond himself. Yet, he offers no evidence, as required by law.

[4] Here, for the sake of argument, we assume, but do not agree to, that he and some in his group purportedly may be members, although we have no way of knowing since he provided no evidence as to who are the members.

informed of all actions regarding ..." the Nation. As pointed out in *Shinnecock Indian Nation*, 52 IBIA at 133, the focus for standing changes after a final decision has been issued:

> The proceedings conducted by the Assistant Secretary, which culminate in a final determination under 25 C.F.R. Part 83, serve a separate function than and are substantively different from proceedings in which a party seeks reconsideration of a final determination made by the Assistant Secretary. Thus, a showing of interested-party status *prior* to a final determination is not dispositive of whether one has standing to seek reconsideration *after* a final determination is issued. Although the same definition of "interested party" applies in both proceedings, the focus for standing changes when a final determination is issued: In the proceedings leading up to a final determination, OFA is accepting and evaluating evidence, and other petitioners may present conflicting claims or conflicting interpretations of the same evidence. During those proceedings, it may well be that a recognized tribe or another petitioning group that shares some common history with the petitioner will presumptively have a sufficient, cognizable interest that might be affected by the proceedings, depending on the outcome.
>
> Once a final determination is issued, however, the Assistant Secretary's interpretations of evidence and relevant findings are fixed, and the final determination becomes the reference point for determining whether a third party has a legal, factual, or property interest in that decision. It then becomes the obligation of an entity seeking reconsideration to demonstrate, with reasonable specificity, how it is or might actually be affected by the Final Determination.

Belardes appears to believe its purported status as an interested party before the Assistant Secretary – Indian Affairs automatically makes it an interested party before the Board. But that is not the case. The IBIA is not bound by a determination by the Assistant Secretary – Indian Affairs on interested party status. *Shinnecock Indian Nation,* 52 IBIA at 132, *citing In re Federal Acknowledgment of the Golden Hill Paugussett Tribe*, 32 IBIA 216, 219 (1998); *See also In Re Federal Acknowledgment of the Snoqualmie Tribal Organization*, 34 IBIA 22, 26 (1999). Importantly, Belardes failed to present absolutely any evidence to establish its interested party status, and its two-page motion does not provide any arguments in support of such status before the Board; rather, it merely reiterates the administrative history of the petition to a certain degree. Thus, Belardes' motion should be denied.

III. The JPA has failed to Establish a Legal, Factual, or Property Interest in the Acknowledgment Decision for the Nation[5]

1. The JPA is not an interested party because it fails to meet required associational standing requirements

Although the JPA asserts that it is a local governmental unit, it is more akin to an association with members.[6] The JPA consists of the cities of Bell Gardens, Commerce, Compton, Gardena, Hawaiian Gardens, and Inglewood, CA. The office of JPA is located in the City of Chino, CA. The creation of an association does not create interested party status where it does not otherwise exist; the JPA must demonstrate that its members are interested parties. The United States' Supreme Court has created an associational standing test which recognizes an association's standing to bring suit on behalf of its members only when **its members would otherwise have standing to sue in their own right.** *Hunt v. Washington State Apple Advertising Commission*, 432 U. S. 333, 343 (1977) (emphasis supplied); *Members v. Acting Great Plains Regional Director*, 50 IBIA 46, 53 (2009). Here, the JPA has failed to show how it and its members would otherwise have standing in their own right. It is critically important since there is no evidence to prove that the constituent cities have independent knowledge of JPA filing for interested party status.

2. The JPA Has Failed To Demonstrate Its Legal, Factual or Property Interest

Assuming *arguendo* that the associational requirements for standing were met, the Coalition has failed to demonstrate a legal, factual or property interest in the Final Determinatino. The definition of "interested party" at 25 CFR § 83.1 was revised in the 1994 amendments to the regulations "to refer to third parties with a significant property or legal

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[5] The Nation incorporates by reference its argument challenging JPA's interested party status in its Request for Reconsideration

[6] In a few statements, the Answer states that "JPA and its constituent members hereby submit this answer to motion of the petitioner.

interest." *See* 59 Fed. Reg. 9280, 9283 col. 2, Feb. 25, 1994; *Match-e-be-nash-she-wish Band*, 33 IBIA 291 (1999). A claim on behalf of another does not suffice. *In re the Acknowledgment of the Golden Hill Paugussett Tribe*, 32 IBIA 216, 220 (June 10, 1998) (rejecting "interested party" status for attorneys who represented others in land claims). Here, the JPA is making a claim solely on behalf of it and its constituent cities, but it has utterly failed to demonstrate that it and those cities, or even one of them, have standing in their own right.

Indeed, the JPA consists of the cities of Bell Gardens, Commerce, Compton, Gardena, Hawaiian Gardens, and Inglewood, CA. The office of JPA is located in the City of Chino, CA. While the City of Chino is located in Riverside County, the six cities listed as members of the JPA are all located in Los Angeles County. The JPA and its constituents are located far from the Nation. The city of Inglewood is located 60 miles from San Juan Capistrano (the "SJC") where the Nation is located. The City of Commerce is located 52 miles from SJC. The cities of Compton 49 miles, Gardena 53 miles, Hawaiian Gardens 41 miles, and Bell Gardens 50 miles, and Chino 50 miles are all north of SJC in a different county. Thus, its claim that its constituent members are "located near" (pgs.1, 3) or in "immediate proximity" (p. 2) to the Nation is disingenuous.

The JPA is registered in California for the purpose of "the advancement of the member cities interests on issues pertaining to gaming." (See Exhibit 3 of Request for Reconsideration). The JPA's purpose of advancing gaming interests for its constituent cities is highlighted on their website with a list of each city and respective gaming facilities within their city limits. *See*, http://www.californiagamingassociation.org/CSRJPA.aspx. The City of Bell Gardens is home to

the second largest card room in southern California, The Bicycle Club,[7] next to the Long Beach Freeway. A few miles away in the city of Commerce along the 5 Freeway and ten minutes from downtown Los Angeles, is the largest card room in southern California, The Commerce Club. The City of Inglewood is home to Hollywood Park, which offers live horse racing, off-track betting, a bingo parlor, and a card room. Next door to the City of Gardena are two card rooms, The Normandie Club, which is one of the oldest card rooms in California, and the Hustler Casino owned and operated by Larry Flynt. Next to Gardena is the City of Compton, home to the Crystal Casino, located at the 91 Freeway and Alameda Blvd. Hawaiian Gardens is located along the 605 Freeway at Carson St. adjacent to the City of Long Beach. It is home to the Hawaiian Gardens Casino and the Moskowitz Bingo Club, owned and operated by Irving Moskowitz, a retired doctor now living in Florida. Again, JPA is disingenuous in its veiled attempt to distort its true purpose and intent, which is shared by its constituent members and clearly is to prevent gaming competition.

Its website could not be more explicit:

> The JPA's purpose is as follows:
> "To promote and protect the card club gaming economy of the State of California and of the Member Cities of this JPA"
>
> The current Member Cities and their designated Council person to serve as Board of Director of the JPA are:
>
> City of Bell Gardens - Pedro Aceituno, Chairman of the JPA.
> City of Commerce - Hugo Argumedo
> City of Compton - Barbara Calhoun
> City of Gardena - Ronald Ikejiri
> City of Hawaiian Gardens - Michiko A. Oyama-Canada and Victor Farfan
> City of Inglewood - Ralph Franklin

[7] It appears that meetings of the JPA takes place at the respective card rooms. This week, the JPA is scheduled to meet at the Bicycle Club, rather than city hall.

(See Exhibit 1, referenced on Friday, August 12, 2011).

Nowhere in its Answer does JPA establish that it or its constituent cities is an interested party by any form of evidence and how it might be affected by the acknowledgment decision. It simply asserts that it is an interested party here because it had interested party status before the Assistant Secretary. These types of conclusory statements are routinely rejected by the Board. *See In Re Federal Acknowledgment of the Chinook Indian Tribe/Nation*, 36 IBIA 245, 248 (Aug. 1 2001); *In re Federal Acknowledgment of the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians*, 45 IBIA 277, 284-285 (2007); *In re Federal Acknowledgment of the Nipmuc Nation*, 45 IBIA 231, 258 (2007).

On November 7, 2006, the JPA requested "informal party" or "interested party" status from the OFA. The purpose for its request was stated as follows: "the Juaneño acknowledgement procedure is a significant opportunity for gaming in the Los Angeles metropolitan area." (See Exhibit 3 of Request for Reconsideration). The Chairman of the JPA continued by writing that "several of our constituent cities have card clubs. There is a potential for **unfair competition** if a sovereign tribal entity chooses to participate in gaming." (emphasis added). From the beginning, JPA's purpose has been to prevent speculative economic gaming competition. Its constant use in its Answer of conclusory statements that it has a legal, factual or property interest cannot hide its true purpose for participating in this matter.

On December 14, 2006, OFA cited to Leonard Chaidex of Hawaiian Gardens the regulations concerning interested party and informed party status. The Director of the Office of Federal Acknowledgment stated that "Because you have not identified a legal, factual, or property interest in the petitioners...your name and address will be added to the list of contacts as an informed party." (See Exhibit 3 of Request for Reconsideration).

As a result of weighty conversations on August 11, 2008 between the JPA and the Acting Deputy Assistant Secretary, George Skibine, (who was delegated interim oversight over acknowledgement petitioners), regarding the JPA's "jurisdiction pertaining to gaming issues including the San Juaneño," the Acting Deputy Assistant Secretary wrongly granted the JPA interested party status for Petitioner 84A.

The reason for the change of status was that "JPA clarified its status and authority to act on behalf of the cities of Bell Gardens, Commerce, Compton, Gardena, Hawaiian Gardens, and Inglewood." Moreover, the Director of the OFA stated, "your letter provided documentation for only four of the six cities...none of those cities has individually stated its position on the acknowledgement petition." The wrong decision had its repercussions as explained in the Request for Reconsideration.

The function of OFA is to determine the existence of sovereign tribes with whom the Federal Government will enter into a government-to-government relationship and to which federal services will be made available. Here, the JPA asserts an interest in economic protectionism and the suppression of open-market competition specifically related to gaming – a matter not remotely relevant to the goals and purposes of OFA or the process of recognition. Therefore, from a functional standpoint, it would be illogical to allow such a vague theoretical economic injury to confer interested party status on the JPA, or its constituent members standing alone since the sole basis for their status is to protect their gaming interests.[8] The Official

[8] The process of embarking upon gaming is long, complicated and uncertain. the Nation would have to: (1) locate land suitable for a gaming project; (2) purchase the land; (3) have the federal government take the land into trust pursuant to 25 C.F.R. Part 151; (4) determine that the off-reservation land is eligible for gaming under 25 U.S.C § 2719; (5) obtain Department of Interior approval of the Nation's gaming ordinance (25 U.S.C § 2710); (6) negotiate an effective compact with the State of California (25 U.S.C § 2710 (d)); (7) have the compact between the Nation and the State of California approved by the Secretary of Interior pursuant to 25 U.S.C. § 2710(d)(8)(c); and (8)

Guidelines to the Federal Acknowledgment Regulations make clear that statements regarding potential economic impact are not relevant to the recognition process. "Political comments, such as those dealing with the economic impact of acknowledgment on the surrounding non-Indian population, would not be relevant to the acknowledgment decision; decisions are not based on political factors."[9] GDL – V003-D003 at p. 71 (1997).

JPA has no protectable interest in being free from gaming competition.[10] "As a general rule, competitors lack standing to challenge competition created or enhanced by governmental action . . ." *National Association of Securities Dealers, Inc. v. Securities and Exchange Commission*, 420 F.2d 83, 96 (D.C. Cir. 1969), *citing Pennsylvania R. Co. v. Dillon*, 335 F.2d 292, 294 (D.C. Cir. 1964). "This Court has . . . repeatedly held that the economic injury which results from lawful competition cannot, in and of itself, confer standing on the injured business to question the legality of any aspect of the competitor's operations." *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 5-6 (1968). To date, neither OFA nor this Board has allowed a speculative economic interest to be sufficient for status as an interested party. Further, this Board specifically declined to rule on interested party status when confronted with only an economic interest by the Columbia River Crab Fisherman's Association and Michels

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construct the casino. All of those steps are still necessary just to get to the point where the Nation could possibly compete with a card room in the Los Angeles area.

[9] The interests of a party must, by definition at part 83.1, include a "legal, factual or property" interest. This list fails to include economic or competitive interests—those asserted by the JPA. If the Department had intended "legal, factual or property" interests to be so broad as to permit economic or competitive interests, it would have said so, as it has done in other Department regulations. For example, 25 CFR Part 163 (Indian forestry regulations) limits "interested party" status to "any person whose own direct economic interest is adversely affected by an action or decision." Part 163.33. Here, the legal maxim *Expressio Unius Est Exclusio Alterius* applies.

[10] It has long been the expressed policy of the United States government to foster and protect competition. See, e.g. Sherman Act, July 2, 1890, ch. 647, 26 Stat. 209 (15 U.S.C. § 1–7).

Development Company (card room). *In re Federal Acknowledgment of the Chinook Indian Tribe/Chinook Nation,* 36 IBIA 245, 246 (2001).

Additionally, Congress has, through the Indian Gaming Regulatory Act, Pub.L. 100-497 (1988) (25 U.S.C. § 2701 *et seq.*) (IGRA) crafted a comprehensive gaming regulatory regime to regulate gaming by federally-recognized tribes. IGRA, and not 25 CFR Part 83, establishes the federal jurisdictional framework governing Indian gaming. The purposes of the act include providing a legislative basis for the operation/regulation of Indian gaming, protecting gaming as a means of generating revenue for the tribes, and encouraging economic development of tribes. 25 U.S.C. §2702.

The JPA continues with its conclusory statements regarding purported effects on "its governance, revenues, provision of services and planning" (p. 3) in an attempt to demonstrate that it has a significant legal, factual or property interest. It relies upon *In re Federal Acknowledgment of Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan*, 33 IBIA 291, 299 (1999). In the quote from the case cited by JPA, the Board did state that "[l]ocal government units in the vicinity of a newly acknowledged tribe would be affected by an acknowledgment determination in a number of ways ..." The qualifier is that the governmental unit is in the vicinity of the tribe. Here, the JPA is located in Riverside County which is far from the Nation which is located in Orange County and a far distance of 42 miles to the nearest constituent city.

More importantly, in the *Pottawatomi* case, the City of Detroit based its argument that it was an interested party on the Tribe's statements that it intended to acquire land in the Detroit Metropolitan area for the purposes of developing a casino. It demonstrated causation. Here, the

Nation has not made statements that it intends to open a casino in one of the constituent cities of JPA. Thus, JPA cannot demonstrate it had a legal, factual or property interest.

In sum, the JPA has failed to establish that it is an interested party, and therefore it should not be granted Interested Party status here. *See In Re Federal Acknowledgment of the Shinnecock Indian Nation,* 52 IBIA 127 (2010); *State of Iowa and Board of Supervisors of Pottawattamie County, Iowa v. Great Plains Regional Director,* 38 IBIA 42, 52 (2002) (dismissing as too speculative the possibility of gaming on a specific parcel of property based on memorandum by tribal attorney and newspaper articles.).

CONCLUSION

Based on the above reasons, the Board should deny the requests of Belardes and JPA for Interested Party status.

Anthony Rivera, Jr.
Tribal Chairman
Juaneño Band of Mission Indians,
Acjachemen Nation

THE TRIBAL COUNCIL OF THE JUANEÑO BAND OF MISSION INDIANS,

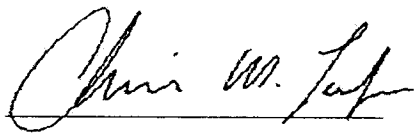
ACJACHEMEN NATION

By: _____
Anthony Rivera Jr.

Its: Chairman of the Tribal Council

_____

Its: Vice Chairwoman, Tribal Council



Chris M. Lobo

Its: Member at Large, Tribal Council

Cecelia Martinez

Its: Member at Large, Tribal Council

California Gaming Association

Cities for Self-Reliance Joint Powers Authority

The Cities For Self Reliance Joint Powers Authority was formed in July 2001 by the Cities of Bell Gardens, Commerce, Gardena and Hawaiian Gardens. In July 2006, the existing Cities of the JPA admitted the Cities of Compton and Inglewood as Members of the JPA.

The JPA's purpose is as follows:
"To promote and protect the card club gaming economy of the State of California and of the Member Cities of this JPA"

The current Member Cities and their designated Council person to serve as Board of Director of the JPA are:

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City of Inglewood - Ralph Franklin

CERTIFICATE OF SERVICE

I certify that on August 15, 2011, I caused to be deposited for mailing by the United States Postal Service postage prepaid, First Class Mail, return receipt requested, a true and correct copy of the foregoing Reply To Belardes Motion For Interested Party Status And Answer Of The California Cities For Self Reliance Joint Powers Authority, addressed as follows:

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Its: Chairman of the Tribal Council

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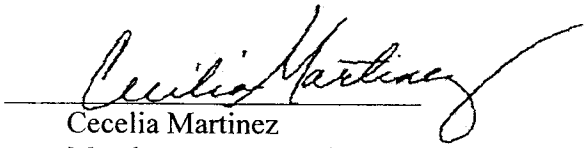
Its: Vice Chairwoman, Tribal Council

Chris M. Lobo
Its: Member at Large, Tribal Council



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Its: Member at Large, Tribal Council

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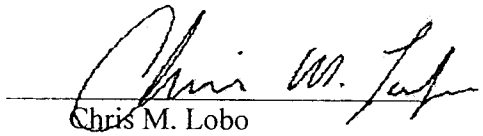

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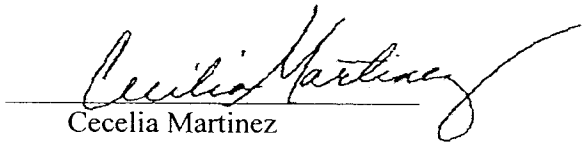

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