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Tribe Blasts Secretary of Interior for Illegal Denial of Land into Trust Application

Tribe believes that changing the rules in the middle of the process is unconscionable and illegal

(Warner Springs, CA) The Los Coyotes Band of Cahuilla and Cupeño Indians was shocked when it received a letter from the Department of the Interior (DOI) on Friday, January 4, stating that DOI had completed its evaluation and was rejecting the Tribe's application to take land into trust in Barstow even though DOI failed to allow the completion of necessary studies. The Barstow land is crucial to the efforts of the Tribe and the City to bring viable economic development to their depressed communities through the development of an Indian gaming facility there. Originally invited to Barstow by the City itself, the Tribe and the City had been working together on the project for five years.

The Tribe was shocked by the letter in part because the Department attempted to justify its action by imposing a new "commutability" rule that does not appear in its own regulations and which has never before been applied to any fee to trust application. (DOI has previously approved several land acquisitions for tribes applying to take land into trust for gaming as much as 300 miles away from their reservations, including some earlier in the Bush Administration.)

In dismissing the Los Coyotes application, Interior asserted that the Tribe should build a gaming facility on or near the Los Coyotes reservation but cited no evidence whatsoever that this would be a viable alternative. (The Los Coyotes Band's reservation is located in the remote mountainous area of northern San Diego County – surrounded on three sides by national forests. Electricity was brought to the edge of the reservation less than 10 years ago, and the reservation generally is unsuitable for significant economic development. For this reason, there are no viable employment opportunities and less than 20% of the tribe's members live on the reservation.)

The Tribe was shocked by Interior's action also because DOI's own studies concerning the application had not even been completed yet. An early draft of the required environmental impact statement (EIS), which demonstrates the dire unmet needs of the Tribe and how the Barstow facility would meet them, has been completed, but has been languishing at DOI and was never released for completion. "DOI made several statements that were clearly contrary to the administrative record contained in the draft EIS – part of the record the Tribe has provided, yet the Department apparently ignored. It appears that the Department acted before the EIS was completed in order to justify ignoring factors that would have compelled a different result," responded newly elected Los Coyotes Tribal Spokesperson, Francine Kupsch.

“Changing the rules at this late date is a cruel and arbitrary act by Secretary Kempthorne. We worked hand-in-hand with the City of Barstow, the State of California and the Department of the Interior to follow the procedure historically used to obtain land for off-reservation gaming. To invent new rules at this juncture and then apply them retroactively reeks of politics.”

“The Secretary implies that tribal members would be better off poor and unemployed and living on the reservation rather than living off the reservation near the casino with a job. The purpose of Indian gaming is to improve the quality of life for all our members, by providing electricity, improved housing conditions, education and health care, regardless of where they reside,” said Kupsch.

Interior drew its conclusions without any consultation whatsoever with the Tribe or the elected leaders of the City of Barstow, without ever having visited the Tribe’s remote and desolate reservation, and without ever having visited the City of Barstow or its elected leaders. Yet DOI remarkably concluded that “...*the negative impacts on reservation life would be considerable.*” Kupsch said, “It is fairly clear that the Department’s actions were driven by political forces in Washington, D.C. rather than by any interest or regard for the wellbeing of the Tribe or the Barstow community. They have never seen how or where we live.”

“The new rules will severely restrict the economic opportunities of poor tribes living in remote areas of the country.” Kupsch concluded, “Even though disgraced lobbyist Jack Abramoff and his crony Steve Griles sit in their respective jail cells, the dirty work by his former clients to prevent poor and disadvantaged tribes from having economic opportunities continues with a new cast of lobbyists and now even the Secretary of the Interior himself, who is more than willing to sacrifice us to further his personal political goals and aspirations. We can only hope that the same reporters who focused on the Abramoff scandal will again look to see that such influences are alive and well at the Department.”

Historically, many tribes were moved hundreds and even more than a thousand miles from their homes to reservation established by the federal government in areas that were desolate and away from population centers. “The federal government did not have any problem moving tribes hundreds of miles from their homes to remote reservation properties – but now, they have a problem when tribal members try to venture off desolate reservations to feed their families.”

“Ten other tribes, including the Big Lagoon Rancheria and Chemehuevi, received virtually identical letters,” stated Shane Chapperosa, Tribal Vice-Chair and Economic Development Chair. “All but one of these relied on this new “commutability” rule, which suggests this unprecedented purge of applications is based on the Secretary’s personal political agenda of prohibiting off-reservation gaming. This was done with absolutely no regard for the welfare of the Tribe, its members or the community of Barstow. We will be looking at all our legal options to respond to this unfair and arbitrary determination.”

Kupsch concluded, “It is astonishing that Congress, whose role it is to set policy when it comes to Indian affairs, has actually rejected proposed changes like the one the Secretary has now instituted, yet the Secretary feels that he can usurp Congress’s role. We hope the Congress will look into this Secretary’s abusive and overreaching acts.”

Background

The Indian Gaming Regulatory Act (IGRA) was passed by Congress and signed by President Reagan in 1988 to regulate Indian gaming. IGRA includes a “Two-Part Determination” process to allow tribes with reservations not conducive to viable economic development to apply for an off-reservation casino. The application is required to prove the project is economically beneficial for the Tribe and not detrimental to the local community. The project also had to have the agreement of the Governor. The Los Coyotes and the city of Barstow started to pursue an off-reservation casino in 2001. At the request of Governor Schwarzenegger, the Big Lagoon Tribe joined the project and compacts with the state and both Tribes were signed in 2005. The Tribes immediately began working with the DOI on the land-into-trust process and filed their formal application with DOI in March of 2006. A public hearing was held in Barstow by DOI in May of 2006. Preliminary drafts of the Environmental Impact Statement were sent to the Tribe and City in 2007. A final draft prepared by the DOI staff was awaiting release by the Secretary.