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Of the Committee of Natural Resources

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Mr. Chairman and Members of the Subcommittee, my name is Cheryl Schmit. I am the founder and director of Stand Up For California. *Stand Up for California* is a statewide organization with a focus on gambling issues affecting California, including tribal gaming, card clubs and the state lottery. We have been involved in the ongoing debate of issues raised by tribal gaming and its impacts for more than a decade. Since 1996, we have assisted individuals, community groups, elected officials, and members of law enforcement, local public entities and the State of California as respects to gaming impacts. We are recognized and act as a resource of information to local state and federal policy makers.

With me today are two community group representatives that have interacted with Stand Up For California for several years. Mr. Jerry Uecker of *Save Our Communities* is here today as his community faces a significant threat to public safety and personal financial lost due to a fee to trust acquisition. Ms. Toni Hawley of Blythe Boat Club is here because she has been evicted by the Colorado River Indian Tribe from property to which she holds a deed since 1948.

In 2009, Stand Up For California submitted comments on a proposed Carcieri Fix to both the House Resources Committee and the Senate Committee on Indian Affairs. In those comments our organization stated its full support for the language recommendations in the testimony of Attorney General Lawrence Long, Executive Director of the Conference of Western State Attorneys General.

Attorney General Long's testimony addressed the unintended consequences that have been created by the lack of objective criteria and standards in the current fee-to-trust process. Moreover, the current fee-to-trust process is a program that has outlived its prior goals and purposes and must be reformed balancing the needs of tribes with the surrounding communities.

Today, it appears a legislative solution is necessary to provide guidance to the Department of the Interior which has created and sustained the current trust land system. The development of the trust land system has been on a case-by-case basis, thus establishing weak procedures and ill-defined substantive standards. Since the Department has a special responsibility to Indians and tribes and no particular obligations to states, local governments and the surrounding communities of citizens, this explains why objective standards are so necessary.

Congress must come to face the fact that it has essentially legalized gaming in the United States and dictated it from the federal level to states and municipalities. If Congress passes a "clean fix" it will again expand gaming nationally. Congress must deal wholly and fully with the impacts caused in states and local areas populated with communities of non-Indian citizens who will directly and financially suffer the impacts of federally created gaming.

Tribal interests have established no case whatsoever that a Supreme Court decision should be reversed by a quick fix bill. The proponents have simply stated that the decision creates two classes of tribes. This simple reasoning is supposed to support the fix. What are the two classes of tribes? We already have tribes with casinos and tribes without, tribes with land and tribes without. The Indian Gaming Regulatory Act did not promise a casino to every tribe. Moreover, in reading the Secretary's review of the Cowlitz Determination, it plainly stated that a fix is not necessary for a determination that a tribe was under federal jurisdiction prior to 1934.

If this committee is to recommend a quick fix, it should be based on real evidence that answers the question: What is the factual basis for passing a reversal of a United States Supreme Court Ruling? Only when we see serious answers to the 16 questions to Chairman Hastings letter of October 30, 2009 to the Secretary of the Interior, supported by evidence, will there be a basis for discussion on the merits of a "clean fix" versus a "well-reasoned overhaul" of the entire fee-to-trust process.

The *Carcieri v. Salazar* ruling is a catalyst for necessary reforms at the federal level of government. Any proposed "fix" must restore the balance of authorities between tribes, states, local governments and the surrounding community of citizens.

Let me give you a snapshot of California issues, the result of unintended consequences:

California is home to 108 Indian tribal governments. California's tribal governments have the smallest population of enrolled tribal members — approximately 32,000 — as compared to other states. Yet, 68 of the 108 tribes operate casinos and collect about a third of the national tribal gaming industry revenue.

California has approximately 78 tribal groups seeking federal recognition. In 1998 prior to the legalization of slot machines on tribal lands there were only 48 tribal groups petitioning for federal recognition. The prospect of gaming in California has significantly affected this process.

Presently, California Tribes have 135 fee-to-trust applications encompassing more than 15,000 acres of land. While most fee-to-trust applications are labeled as non-gaming many of the lands are described as contiguous and adjacent lands. The described use of the contiguous and adjacent lands is sometimes vague, ambiguously stated or more importantly its use is changed once in trust, often for gaming. Contiguous lands meet the exception for gaming on after acquired lands and should be considered and processed as a gaming acquisition.

California needs a "programmatic policy" due to: (1) the arbitrary administrative actions of the BIA in recognizing tribal governments in California, (2) unique federal Indian law specific to California and (3) the state's unique history of events in the development of statehood that make California unique in the nation.

The following examples will illustrate the serious public interest implications of fee to trust acquisitions on surrounding jurisdictions, businesses and citizens as well as the impacts of administrative actions of the BIA recognizing tribes.

1. **The Soboba Band of Luiseno Indian's** has a fee-to-trust application seeking an additional 600 acres of "contiguous" and adjacent lands to develop an expanded gaming complex and resort. (Current reservation is 5915.68+ ac. -- Pop. Approx. 700). This fee-to-trust acquisition will create 3 islands of non-Indian homeowners (approx. 1200) within the newly acquired trust lands. This creates significant life-safety and quality of life concerns for citizens living within the trust lands. The majority of these citizens are elderly and have nowhere to move.(Seniors: est. 70% over 55; Breakdown: 10% over 80; 20% over 70; 20% over 60; 20% 55-60) The concerns are grave as these residents, if the fee-to-trust acquisition is approved, will be isolated in the middle of trust land governed by a Tribe that has over the last several years, according to a letter by Sheriff Stanley Sniff, Jr. to the NIGC in 2009, a "history of crime incidents" on the reservation.

Placing aside the issue of public safety related to crime that have occurred on this particular reservation, what happens to these citizens in the event of a natural disaster such as an earthquake or flood? Access is one road across a two-lane bridge in a flood zone. This presents exigent circumstances over life-safety and emergency service issues that must be given consideration for continuous ingress and egress on trust lands.

2. **The Morongo Band of Mission Indians** requested in 2000 that the County of Riverside vacate public interest in County roads "within" the reservation. However, the Morongo appear to be asserting authority over portions of a public road and the fee property of a non-Indian citizen that is clearly "outside" of the exterior boundary of the reservation as stated by the Solicitor of the BIA in 2004 in the Notice of Decision taking additional fee land into trust. Additionally, there are 5 other property owners who now appear to be landlocked within trust lands. These residents also state the Morongo is asserting authority over their free access and use of private property. They also note increased life safety concerns related to vandalism of their properties. This is the future of the citizens facing the Soboba fee-to-trust acquisition.

3. **The Colorado River Indian Tribes (CRIT) of Arizona** is claiming 17 miles of land along the west bank of the Colorado River as reservation or trust land in California. However, there is no Act of Congress, as required by unique federal law in California, defining the reservation boundary. Nor has there been a fee-to-trust process over these claimed lands. CRIT has requested tribal state compact negotiations for a casino in California, but the State of California

questioned where the reservation if any, in California is. In the meantime, CRIT asserts tribal authority over non-Indians living on federal Reclamation lands. Citizens residing along the river are victims of a 50 year unresolved dispute between the U.S. DOJ, the CRIT and the State of California. California and the United States need a vehicle to resolve this issue.

4. **Off Reservation Gaming** - Four Tribes are requesting restored lands determinations for gaming and have pending fee to trust applications: Guidiville, Scotts Valley, Ione, and Cloverdale. These are Rancheria tribes that were restored by court-stipulated judgments or were administratively reaffirmed by the Secretary of the Interior. The State of California was never included as a party of interest in these determinations. There are an additional 4 fee-to-trust applications for gaming through the two-part determination: North Fork, Enterprise, Manzanita and Los Coyotes. These proposals are sponsored by out-of-state developers, gaming investors and some tribal gaming interests, both in and out of state. The proliferation of off-reservation gaming has caused an ambiguity of not only the exceptions found in IGRA, but uncertainty over the application of the Indian Reorganization Act to California Rancheria Tribes.

5. **The Tule River Indian Tribe** submitted a "non-gaming" trust application for property it owns in fee in downtown Porterville, Tulare County near the airpark. The land is about 20 miles from its reservation, established in 1864 by Congressional authority. The land was previously the subject of a gaming application, but the Tribe insisted that it was not and the BIA asserted that it was merely speculation that the fee-to-trust acquisition was for gaming. Yet, the Southern San Joaquin Valley radio station KTIP AM 1450 began broadcasting a daily advertisement from the Tule River Tribal Council indicating plans, "…for the move of Eagle Mountain Casino to its intended home near the Porterville airpark. (Documented in the County of Tulare comments on the FONSI)

This is not the first time a Tribe's application asserted a non-gaming purpose, only to find that once in trust the land is used for gaming or other casino amenities. Several California tribes have acquired fee land with Housing and Urban Development Grants, transferred the land into trust and then used this land for gaming. Even some of our state's prominent tribes have stated the use of the land as non-gaming and then used the after-acquired lands for gaming or gaming amenities. This expands gaming operations without application of the relevant laws, most notably section 20 of Indian Gaming Regulatory Act and its provisions for protecting the delicate balance of authority between the tribe, state and federal government. California has been and continues to be severely affected by this "bait and switch" tactic.

6. The Big Lagoon Rancheria has sued the State of California for bad faith negotiations in the development of a tribal-state gaming compact. The evidence obtain by the State so far indicates there is no linear connection between the original rancheria residents and current members, making the Tribe ineligible for the 1994 fee-to-trust acquisition. It also raises a material question whether the United States lawfully considers the Tribe as federally recognized. Big Lagoon

demonstrates the arbitrary administrative actions of the BIA in recognizing tribal governments in California.

Failure to work with affect communities of citizens and local governments has resulted in numerous impacts:

- Domestic and agricultural water outages that also exacerbate fire protection needs
- Overdraft of ground water creating interference with wells
- Denial of access to private property of non-tribal citizens
- Proposed garbage dumps in sensitive environmental locations
- Noise nuisance from the development of a new raceway within 100 yards of an established neighborhood
- Numerous collisions on narrow unlit rural roads
- Increased drunk driving in rural residential areas
- Massive developments in agriculturally zoned areas
- Developments in ecologically sensitive areas that disrupts wildlife migration, movement and connectivity
- A disruption of law enforcement services due to a mix of jurisdictions between tribes and the state
- Unfair competition for local businesses that were established in an area prior to the development of a new reservation on after acquired lands.

Stand Up For California and the many community groups and citizens that interact with our organization urges Congress to reform the trust land system and to the greatest extent possible provide all affected parties the opportunity to participate in a constructive, fair and objective process. We further urge the Sub-committee to advise the Natural Resources Committee to consider holding field hearings in affected States like California, so that all affected stakeholders are given an opportunity to present the many unintentional consequences of the current land into trust system as well as to offer suggestions to enhance and make more suitable the process.

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