

TESTIMONY OF THE HONORABLE MARK MACARRO
CHAIRMAN, PECHANGA BAND OF LUISEÑO MISSION INDIANS

Before the House Committee on Resources

April 17, 2002

Mr. Chairman, I thank you and the other distinguished members of the Committee for the opportunity to present testimony on behalf of the Pechanga Band of Luiseño Mission Indians ("Tribe" or "Pechanga Band"). I am here today to respectfully ask your support of H.R. 3476 which, if passed into law, would protect the Great Oak Ranch property from condemnation until the Secretary of the Interior makes a final decision regarding our pending fee to trust application for that land.

In this testimony, I will describe the efforts that my Tribe has taken to return and protect the Great Oak Ranch as part of the Pechanga Indian Reservation. I will also describe the unique and irreplaceable resources of this land, including the 1500 year old Great Oak, as well as other cultural, religious, archaeological and biological features. I will outline the unanimous local support that we have received for our trust application, and the ongoing efforts of San Diego Gas & Electric Company ("SDG&E") to impede and threaten the Great Oak Ranch with continuing threats of appeals and condemnation of our property.

**THE PECHANGA TRIBE'S FEDERAL PETITION TO TAKE THE GREAT OAK RANCH
PROPERTY INTO TRUST AS A LEGACY FOR THE TRIBE AND ITS MEMBERS**

On June 29, 1882, an Executive Order issued by the President of the United States established the Pechanga Indian Reservation ("Pechanga Reservation"), which is located within the ancestral and aboriginal lands of the Tribe. Additional acreage has been added over the years, for a total of 4,396.44 acres. The Pechanga Reservation consists of federal trust property held for the beneficial use of the Tribe. The Reservation is intended to be a permanent homeland in order to further the federal policy of Indian self-determination, including economic development and self-sufficiency.

On May 15, 2001, the Tribe acquired thirty-one parcels totaling 688.73 acres, and owns the property in fee. This land is located adjacent to the Reservation. These parcels (also referred to as the "Great Oak Ranch" property) are located within portions of Sections 28, 29, 32 and 33, Township 8 South, range 2 West, San Bernardino Base Meridian, in Riverside County, California. The property is located approximately 5 miles

southeast of Temecula, and is adjacent to the boundary of San Diego County, California.

As part of its trust relationship with Indian tribes, the United States may take title to property in trust for federally-recognized Indian tribes pursuant to the provisions of Section 5 of the Indian Reorganization Act, 48 Stat. 985, Act of June 18, 1934, 25 U.S.C. Section 465, and Section 203 of the Indian Land Consolidation Act of 1983, 25 U.S.C. Section 2201, et seq., as amended. The United States Department of Interior has adopted regulations that specify the procedures and substantive criteria used to process tribal applications to take land into trust for the benefit of federally-recognized Indian tribes. See 25 Code of Federal Regulations Part 151.

On December 31, 2000, the General Council of the Tribe, consisting of all adult members of the tribe, duly adopted Resolution #001231-C. This resolution directed the Tribal Chairman to submit an application to the United States to take the Great Oak Ranch property into trust. This resolution also directly requested that the Secretary approve the application. [See Exhibit A] For the people of Pechanga, returning these lands to our reservation is paramount. The rugged, undeveloped landscape of the Ranch is rich with spiritual, cultural, and archaeological sites. This Ranch is Pechanga's legacy.

In June 2001, the Tribe submitted an application to the United States Department of the Interior, pursuant to regulations found at 25 CFR §151 et seq., to take the Great Oak Ranch property into trust by the United States for the benefit of the Tribe. As outlined in the application, the Tribe's intended use of the property involves the continuation of existing agricultural activities, maintenance and use of three existing residences on site, and maintenance and preservation of the existing Luiseño Indian cultural resources found throughout the site. [See Exhibit B]

Our property is home to many irreplaceable resources - both cultural and natural. The primary goal in acquiring the parcels of land covered by the trust application is to preserve and protect the ancestral homelands and cultural resources of the Tribe, including many sacred sites, archeological sites, and items. These ranchlands also include the historically significant former home of Erle Stanley Gardner, author of the famed Perry Mason novels.

Yet the centerpiece of these lands is its namesake - The Great Oak. The Great Oak is believed to be more than 1500 years old and is heralded as the oldest known coastal live oak tree. It stands majestically at more than 96 feet in height with a massive trunk nearly 20 feet in circumference. Each branch, larger than most live oak trunks, rise up toward the sky and then come down to land - creating a natural, serene sanctuary. It was underneath these great branches that Pechanga members held sacred ceremonies eons more than a hundred years ago. As we sit at the dawn of a new century, the people of Pechanga are once again gathering under the canopy of the Great Oak.

We believe the resources found on the Great Oak Ranch should be preserved and remain within the Ranch. The sole purpose of the acquisition is the preservation and the protection of Luiseño people's natural and cultural resources. The Pechanga Band is committed to protecting and preserving the invaluable and irreplaceable cultural resources of the Pechanga and Luiseño people. The cultural resources located within the Great Oak Ranch provide the Pechanga Band with the unique opportunity to protect and preserve such resources on property owned by the Tribe itself. These words spoken by the federal government validate the emotion in our hearts that the Great Oak Ranch should come home to its native family.

Once the Great Oak Ranch property is accepted into trust by the United States, it will become part of the Pechanga Reservation. The Tribe will exercise powers of self-government, including civil regulatory

jurisdiction, to protect the unique archaeological, biological and cultural resources, as well as the historic and sacred sites on the Great Oak Ranch.

THE TRIBE RECEIVES UNANIMOUS LOCAL SUPPORT FOR ITS TRUST APPLICATION

The people of Pechanga do not stand alone in their commitment to protect the Great Oak Ranch. From elected officials to business and community leaders, many have stepped forward to ensure the preservation of this Temecula Valley gem. Our Federal representatives in Congress Darrell Issa and Mary Bono; Senators Barbara Boxer and Dianne Feinstein; representatives from the state including State Senator Jim Brulte and Assemblyman Dennis Hollingsworth; and the Save South Riverside County Association, which represents the citizens of Riverside County, and the Temecula Valley Winegrowers Association, a vital part of the Valley's tourism and business sectors. Support for the Great Oak Ranch has transcended traditional geographic and political lines and serves as a symbol for all the people of Temecula Valley. [See Exhibit C]

SDG&E'S THREATENED CONDEMNATION ACTION AND FURTHER LITIGATION

The Tribe needs legislation to protect the fee-to-trust application process from SDG&E's threatened use of eminent domain powers. The Tribe is concerned that SDG&E continues to threaten the initiation of condemnation proceedings against the Great Oak Ranch property, even though SDG&E has not received a determination from the California Public Utilities Commission that the Valley Rainbow Interconnect Project is necessary or in the public interest.

On March 23, 2001, SDG&E filed an Application for a Certificate of Public Convenience and Necessity and its Proponent's Environmental Assessment for the Valley-Rainbow 500-kilovolt (kV) Interconnect Project with the California Public Utilities Commission ("CPUC"). The CPUC application identifies both a preferred and proposed alternative route for the transmission line. The route preferred by SDG&E is along the easternmost and a portion of the southern-most sides of the Pechanga Indian Reservation, adjacent to the Cleveland National Forest. One of SDG&E's seven "alternative" routes pass through the Great Oak Ranch property, threatening several archaeological sites and the root system of the Great Oak tree.

California public utilities have historically had broad powers of eminent domain. This has been necessary so that utilities could construct necessary improvements to their utility systems. However, as the concept of utility deregulation developed in California, the California Legislature determined that certain limitations would need to be placed upon the utilities' use of this power of eminent domain, in order to prevent the inappropriate use of this power as a competitive tool. In order to prevent the abusive use of this power, the California Legislature enacted Public Utilities Code Section 625. [See Exhibit D]

As enacted, the law requires (with certain limited exceptions) public utilities to obtain prior approval by the CPUC before any eminent domain powers may be exercised by a public utility for competitive purposes.

The section specifically provides a procedure for the review by the CPUC of condemnation proceedings initiated by public utilities. The public utility must file a petition or complaint, and provide personal notice to the owners of the property that is to be condemned. Before making a finding pursuant to this subdivision, the Commission must conduct a hearing in the local jurisdiction that would be affected by the proposed condemnation.

SDG&E has argued that this section does not limit its ability to condemn the Great Oak Ranch. Last year,

SDG&E initiated pre-condemnation proceedings in Riverside Superior Court to survey the property of 320 property-owners along a 1,000 foot-wide corridor for its proposed alternative route. In this recent related litigation against 320 landowners, SDG&E argued that the proposed Rainbow-Valley Interconnect Project is not a "competitive service," and therefore a Commission finding under Section 625 (a)(1)(A) is not required. SDG&E has also argued that the Project is required to fulfill a CPUC ordered obligation to serve (that would satisfy the exception to the requirement for a hearing found in (a)(1)(B) of Section 625). Both assertions are, at best, premature, as the CPUC is considering SDG&E's Application for a Certificate of Public Convenience and Necessity at this time.

SDG&E, has repeatedly threatened and continues to threaten the initiation of eminent domain proceedings for purposes of a right of way. In a August 7, 2001, letter from Carolyn F. McIntyre, SDG&E Vice-President to California Assemblymember Rod Pacheco, SDG&E took the position that CPUC approval of the project was not a condition precedent to bringing a condemnation action [See Exhibit E]:

In response to the legal questions raised in your letter, SDG&E has the legal authority to enter private land to conduct these activities [notify 320 property owners along a 1,000 foot wide transmission line study corridor] before the CPUC approves the project.

In *Pacific Gas & Electric Co. v. Parachini* (1972) 29 Cal.App.3d 159, 166, the court stated that: "... a certificate from the Public Utilities Commission is not a condition precedent to the acquisition of property by a regulated utility." Similarly, in *Pacific Gas & Electric Co. v. Hay* (1977) 68 Cal.App.3d 905, 912, the court reiterated that "... in any event, Parachini supports the view that agency approval is not a condition precedent to the commencement of a condemnation proceeding. ..."

On March 21, 2002, the Bureau of Indian Affairs, Pacific Regional Office issued a notice of decision to have the Great Oak Ranch property taken into trust for the Tribe ("Notice of Decision"). [See Exhibit F] The Notice of Decision found that the Tribe established the need for additional land for purposes of exercising governmental jurisdiction and assuring the long-term protection of the Luiseño Mission Indians' cultural resources and in the enhancement of tribal self-determination. The Notice of Decision also found that the Tribe established the need to protect the biological resources of the Great Oak Ranch property, in addition to the Great Oak, elderberry bushes, buckwheat and sage species. The Notice of Decision noted that "Sempra and its subsidiary, SDG&E, oppose the acquisition because the subject property is a 'possible' route for a new 500,000-volt power line," but granted the Tribe's application because the Tribe had made the required showing of need under the regulatory process in 25 CFR Part 151.

It is our understanding that this decision by the BIA will be appealed by SDG&E given the possible routing over the Great Oak Ranch for its proposed Valley-Rainbow Interconnect project. [See Exhibit G] After devoting years to secure these lands we are disappointed that our efforts may be further delayed. The latest evidence of SDG&E's intentions were outlined in a March 29, 2002, letter from Steven C. Nelson, Esq. to Michelle Cooke, Administrative Law Judge. In that letter, SDG&E stated its position to oppose the Tribe's trust application by appealing through the administrative process:

In these appeals, SDG&E will explain, as it has done so in its other filings at BIA, that SDG&E is not opposed to the land being taken into trust so long as a right-of-way is preserved for the Project. SDG&E also will reiterate that it remains open to further discussions of these issues with the Tribe.

SDG&E continues to threaten more litigation and the right to bring a condemnation action against the Tribe for the power to take a right of way corridor over the Great Oak Ranch property. The Tribe needs this legislation to preserve the status quo until its trust application has been fully decided on the merits, and all appeals have been exhausted.

CONCLUSION

Mr. Chairman and Members of this Committee, thank you for granting me the opportunity to represent the Pechanga Band of Luiseño Indians today. The Great Oak Ranch represents the return of our homelands and its resources to our people and our community. But most importantly, protection of the Great Oak Ranch allows us to preserve and share Pechanga's history with generations to come. I respectfully request the expeditious passage of H.R. 3476.

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