1st Submission

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Preliminary Inventory
"Request for Confirmation of Status"
The Tejon Indian Tribe, Petitioner #230

I.	Letter from Kathryn Montes Morgan to James Cason, "Re: Request for Confirmation of Status for the Tejon Indian Tribe." Dated June 29, 2006. received July 5, 2006.	1 p.
II.	Request and Supporting Materials, Historical Exhibits, Volume 1 of 3. Dated June 30, 2006, received July 5, 2006.	196 pp.
III.	Supporting Materials, Historical Exhibits, Volume 2 of 3. Dated June 30, 2006, received July 5, 2006.	416 pp.
IV.	Supporting Materials, Legal Documents, Volume 3 of 3 Dated June 30, 2006, received July 5, 2006.	210 pp.
		823 pp.

TEJON INDIAN TRIBE

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AS-IA, Office of Federal Acknowledgment

June 29, 2006

The Hon. James Cason
Associate Deputy Secretary
The United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

By Hand Delivery

Re: Request for Confirmation of Status for the Tejon Indian Tribe

Dear Sir:

I write on behalf of the Tejon Indian Tribe, located in Kern County, California. I am the current leader of the Tribe, as was my father before me and as was before him my great-great grandfather Chico, who signed a land cession treaty with the United States on behalf of the Tribe in 1851.

Continuously since the negotiation of that 1851 treaty, the United States has acknowledged the Tejon Indian Tribe. That acknowledgement has been expressed and reconfirmed time and again through the United States' lengthy, active, history of serving as the Tribe's trustee. Well documented are the United States' efforts to establish a reservation for the Tribe's benefit, to set aside public lands for the Tribe's benefit, to bring litigation (all the way to the Supreme Court) for the Tribe's benefit, and to provide educational services for the Tribe's benefit. Despite this clear history, and despite the fact that the Tribe was included on an earlier BIA list of "Indian Tribes of the United States," the Tribe has been omitted, apparently inadvertently and certainly erroneously, from the Department's list of federally recognized tribes.

For these reasons, as expressed in significantly more detail in the enclosed Request for Confirmation of Status, we believe that as a matter of law the Department of the Interior must include the Tribe on its list of recognized Indian tribes. We note that we also believe that as a matter of law the Tribe is beyond the scope of the Department's administrative federal acknowledgment process precisely because the Tribe is already federally acknowledged. We also are providing a copy of the enclosed Request for Confirmation to Associate Solicitor for Indian Affairs Carl Artman.

On behalf of the Tejon Indian Tribe, I hereby request a meeting with you and other appropriate officials from the Department to discuss our Request for Confirmation of Status. For that purpose, I respectfully ask that your office contact one of our attorneys, Arlinda Locklear (301/631-3801), V. Heather Sibbison (202/457-6148), or Lawrence Roberts (202/457-6495) to arrange for such a meeting.

The Tejon Indian Tribe looks forward to meeting with you and to the Department's expeditious review of the enclosed Request for Confirmation of Status of the Tejon Indian Tribe

Sincerely,

Kathryn Montes Morgan
Chair

TEJON INDIAN TRIBE
2234 4th Street Wasco, CA 93280
Home (661) 758-2303 · E-mail: kmorgan@bak.rr.com

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THE TEJON INDIAN TRIBE

REQUEST FOR CONFIRMATION OF STATUS

SUBMITTED TO

THE DEPARTMENT OF THE INTERIOR

JUNE 30, 2006

REQUEST AND SUPPORTING MATERIALS

HISTORICAL EXHIBITS

VOLUME 1 OF 3

Prepared by:

Arlinda F. Locklear, Esq.
P.O. Box 605
Jefferson, Maryland 21755
Phone (301) 631-3801

V. Heather Sibbison
Lawrence S. Roberts
Suzanne R. Schaeffer
PATTON BOGGS, LLP
2550 M St. NW
Washington, DC 20037
(202) 457-6148
Fax (202) 457-6315

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THE TEJON INDIAN TRIBE

REQUEST FOR CONFIRMATION OF STATUS

Submitted June 30, 2006

Prepared by
Arlinda F. Locklear
P.O. Box 605
Jefferson, MD 21755
(301) 401-4873

V. Heather Sibbison
Lawrence S. Roberts
Suzanne R. Schaeffer
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-6148

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THE TEJON INDIAN TRIBE

REQUEST FOR CONFIRMATION OF STATUS

INTRODUCTION

The Tejon Indian Tribe (the Tribe) hereby requests that the Department of the Interior correct its list of tribal entities recognized as eligible to receive services from the United States Bureau of Indian Affairs[1] to reflect the Department's historic and continuing acknowledgment of the Tejon Tribe. As discussed in more detail below, the Tejon Indian Tribe has been acknowledged through treaty negotiations, by the federal courts (including the Supreme Court), and by the Bureau of Indian Affairs. At no time has the Tribe been terminated by Congressional action, and at no time has the Department of the Interior asserted that the Tribe's status has been terminated or lapsed. Hence, the United States' acknowledgment of the Tejon Indian Tribe, descended from the historic Kitanemuk Tribe, must be reflected on the Department of the Interior's list of federally recognized tribes.

The Kitanemuk Tribe lived from time immemorial in a canyon in southern California now known as the Tejon Canyon. Because of the Kitanemuk Indians' close association with Tejon Canyon, the Department of the Interior has long referred to the Kitanemuk as the "Tejon Indian Tribe" or the "Tejon Band." Over the course of time the Tribe adopted the name Tejon Indian Tribe, as is reflected in the Tribe's Constitution and Bylaws (attached as Tab A)[2]. Hence the Tejon Indian Tribe is the historic Kitanemuk Tribe, which occupied the area known today as the Tejon Ranch, a huge privately owned area of land variously described in the historical documents as Tejon Canyon, Tejon Pass, Tejon Valley, or simply Tejon. H. Giffen & A. Woodward, *The Story of El Tejon*, at 3 (Los Angeles 1942). *See also Smithsonian Handbook of North American Indians*, Vol. 8 at 564 – 569 (1978). Reflecting the transliteration of the name from early Spanish, early spellings of the word "Tejon" included the variant "Texon" (*see* discussion at footnote 6), similar to the variants of the words "Texas" and "Tejas" from the same time period.

The Tribe is located in Kern County, California, (which county encompasses the Tribe's aboriginal homeland) with the majority of its members living in the Bakersfield area. Bakersfield is the metropolitan area most closely located to the Tejon canyon area. The Tribe is governed by a Tribal General Council (all adult members voting), and a Tribal Executive Committee (composed of an elected Chairman and seven other Councilmembers) that has certain delegated authorities. *See* the Tribe's Constitution and Bylaws (Tab A). The Tribe's current Chairman is Kathryn Montes Morgan, a lineal descendant of Chico, who was a Tejon tribal signatory to the 1851 treaty discussed

---

[1] This list is published by the Department of the Interior in accordance with section 104 of the Act of November 2, 1994, P.L. 103-454 (amendments to the Indian Reorganization Act of 1934). This list is referred to hereinafter as the list of federally recognized Indian tribes.

[2] This Request comprises three binders of materials. Historical exhibits, such as federal reports and correspondence, are provided in Volumes I and II (Tabs organized numerically, Exhibits 1 through 72). Legal documents, such as statutes and court decisions, are provided in Volume III (Tabs organized alphabetically, Tabs A through V).

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below. The Tribe's current membership[3] consists of 211 closely related descendants of the historic Tejon Indian Tribe, the majority of whom reside within a thirty-mile radius around Bakersfield.

EXECUTIVE SUMMARY

From nearly the moment the United States took possession of the territory of California, the federal government asserted jurisdiction over, and established a wardship relationship with, the Tejon Indian Tribe.

On July 7, 1846 the United States acquired from Mexico the territory now comprising the State of California pursuant to the Treaty of Guadalupe Hidalgo. 9 Stat. 922, T.S. No. 207 (1848). Under that treaty the United States "contracted to preserve and protect all existing rights of property recognized by Mexico, including the foregoing title and right possessed by the Tejon Indians at the date of that treaty." *See* United States' Brief at 18, filed in *United States v Title Insurance & Trust Co*, 265 U.S. 472 (1924) *See* **Exhibit 71.** The United States' duties to the California tribes under the Treaty of Guadalupe Hidalgo were not merely formal or theoretical, but rather saw practical effect. In the case of the Tejon Indian Tribe, the United States asserted active and continuous supervision over relations with the Tejon Indian Tribe through treaty negotiations, through the establishment and supervision of a military reservation for the Tribe's benefit, and through repeated efforts to secure a permanent home for the Tribe on its aboriginal lands (which efforts included issuance of a Departmental Order withdrawing nearby lands from the public domain for the use of the Tejon Indian Tribe in 1916, and repeated attempts to purchase for the Tribe portions of aboriginal territory that had became the privately-held Tejon Ranch). *See* discussion at pp. 5-15 below.

In 1920, the United States, acting through the Departments of the Interior and Justice, proclaimed and acted upon its guardian relationship with the Tribe when the United States filed suit in an effort to protect the Tribe's continuing aboriginal title to land in the Tejon Canyon -- a suit the United States prosecuted all the way to the Supreme Court. *United States of America v Title Insurance & Trust Company*, 265 U.S. 472 (1924). *See* **Tab C.** In that case, Interior plainly acknowledged its obligation "as guardian for sundry Indians known as the Tejon Band or Tribe of Indians now and from time immemorial residing on certain premises . . . in what is now Kern County, California." On Interior's behalf, the Department of Justice asserted that the Tejon Indians "now and from time immemorial have been tribal Indians, and at all times since July 7, 1846, have been and now are wards of the United States . . . ." United States Complaint at I, *United States v Title Insurance & Trust Company*, (S.D. Calif.), filed Dec. 20, 1920. *See* **Exhibit 71.** Hence, in 1920 the United States[4] explicitly, affirmatively, asserted that it had a trust relationship with the Tejon Indian Tribe and that it had held such a relationship dating back to 1846. *See* discussion at pp. 6-19 below.

---

[3] As its base roll, the Tribe uses the California Indian Roll, which was prepared in 1933 by the Department of the Interior at Congress' direction. *See* 45 Stat. 602 (**Tab B**). All enrolled members also descend from a Tejon census prepared by special federal Indian agent J.J. Terrell in 1914.

[4] The Department of Justice filed the Tejon lawsuit at the explicit request of the Department of the Interior and represented the view of the Department of the Interior regarding the Tejon Indian Tribe throughout the litigation. *See* United States' Brief at 2, filed in *United States v Title Insurance & Trust Co*, 265 U.S. 472 (1924) (**Exhibit 71**). As a result, the views expressed therein reflected the views of the Department of the Interior.

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Unfortunately, the Supreme Court found that the Tejon Indian Tribe's title to its aboriginal territory had been extinguished by the California Claims Act of March 3, 1851, 9 Stat. 631, which effectively required California's Indian tribes to perfect aboriginal title claim by 1853 or forfeit those claims. Nevertheless, even after the loss in the Supreme Court on Tejon land issues, Interior continued to assert and exercise its general guardian relationship with the Tejon Indian Tribe. Interior sought to protect the Tribe in its continued, peaceful occupation on the same lands on which the Tribe always had lived even though those lands were now subsumed within a huge privately-held area known as the Tejon Ranch. Interior authorized its field officers to expend funds for the purchase of land from the Tejon Ranch, and if and when that failed, authorized the expenditure of funds for acquisition of alternative lands for the Tribe. While Interior ultimately accepted assurances from the business consortium that owned the Tejon Ranch that tribal members would not be disturbed in the occupation of their homes on the Tejon Ranch, Interior continued to oversee the Tribe's general welfare, expending federally appropriated Indian program money to support a school built on Tejon Ranch used for the education of Tejon children and for other tribal community purposes. In 1945, the Tejon schoolteacher retired after twenty-one years, which resulted in the preparation of additional Interior reports documenting federal supervision over the Tejon Indian Tribe during the period. *See* discussion at pp. 18-25 below.

Over the years, the business consortium that owned the Tejon Ranch discouraged tribal members from continued occupation of their traditional homes. As was documented by the United States in its 1920 suit on the Tribe's behalf, the owners of the Tejon Ranch forced relocation by burning houses upon the death of a head of family and by severely restricting the ability of all families to support themselves. Over the course of time, tribal members were forced to move off the Tejon Ranch, generally settling in nearby Bakersfield. A crushing blow was dealt the Tribe in 1952 when a serious earthquake destroyed many of the remaining tribal members' homes. The Bureau of Indian Affairs acted to assist the Tejon Indian Tribe after this natural disaster, coordinating efforts with local agencies and others to ensure that emergency assistance was provided to the Tribe. Despite BIA's efforts, however, many of the Tejon families that had managed to maintain their residences on the Tejon Ranch were forced to relocate to join their fellow tribesman in the Bakersfield area, where they remain today. Nonetheless, Interior continued to provide educational services to the Tribe. *See* discussion at pp. 25-28 below.

In 1961, Interior investigated the condition of the 880 acres that had been withdrawn from the public domain in 1916 for the Tribe. Interior found the land to be of poor quality and located on steep hillsides. Realizing that as a practical matter the withdrawn land was largely unusable by the Tribe, Interior restored the land to the public domain in 1962 by Public Land Order 2738. *See* discussion below at pp. 28-33.

In 1969, just a few short years after the 1962 Public Land Order restoring to the public domain the land originally withdrawn for the Tribe's use, Interior began the preparation of a list of federally recognized tribes. Inexplicably, the Tejon Indian Tribe was not included on that list, or the lists which have followed it. Neither BIA agency nor central office files reveal any explanation for this oversight. Most likely, only tribes with federally-protected land bases were listed, and of course the Tejon Indian Tribe at that time had no such land base. Since it is well established that neither federal recognition nor the trust relationship hinges on the existence of trust or restricted property, it is clear that as a matter of law the Tribe should have been included on the list. *See* discussion below at pp. 33-45.

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The United States' recognition of the Tejon Indian Tribe has spanned a century and a half. At no time has the United States withdrawn or terminated that recognition. Hence, the Tribe continues to have federally recognized status and that status must be reflected on Interior's list of federally recognized tribes.

PART I

RELEVANT HISTORY OF THE TEJON INDIAN TRIBE

1846 – 1853
The Bureau of Indian Affairs' Early Acknowledgement of the Tribe

After its acquisition of California by the Treaty of Guadalupe Hidalgo in 1846, the United States moved quickly to assert its authority over California tribes. President Millard Fillmore appointed a Board of Peace Commissioners to negotiate treaties with California tribes in an effort to relocate the tribes to reservations, thereby serving the dual purposes of protecting the tribes from white incursions[5] and opening up Indian lands for non-Indian settlement. *See generally, The Story of El Tejon, supra.* The discovery of gold in 1849 likely hastened such efforts. *See generally,* George Harwood Phillips, *Bringing Them Under Subjection: California's Tejon Indian Reservation and Beyond, 1852 – 1864*, chapters 2 and 3 [hereinafter Phillips]. The federal government's strategy was to negotiate with multiple tribes simultaneously in order to achieve an agreement to locate those multiple tribes upon a single collective reservation. The various California treaty negotiation sites are identified on the map provided at Figure 1 below.

[5] Conflict was particularly violent near mining sites. *See* Phillips, at chapter 2. Miners formed two groups to drive Indians from tribal lands in the Sierra Nevada. Governor John McDougal of California thereafter ordered the formation of a militia which was organized into three companies of 55 to 72 men. *Id.* at 22. While federal commissioners were attempting to negotiate treaties with the various tribes, the militia was engaging in vicious battles to remove tribes from their aboriginal areas. *Id.* at 26 – 32.

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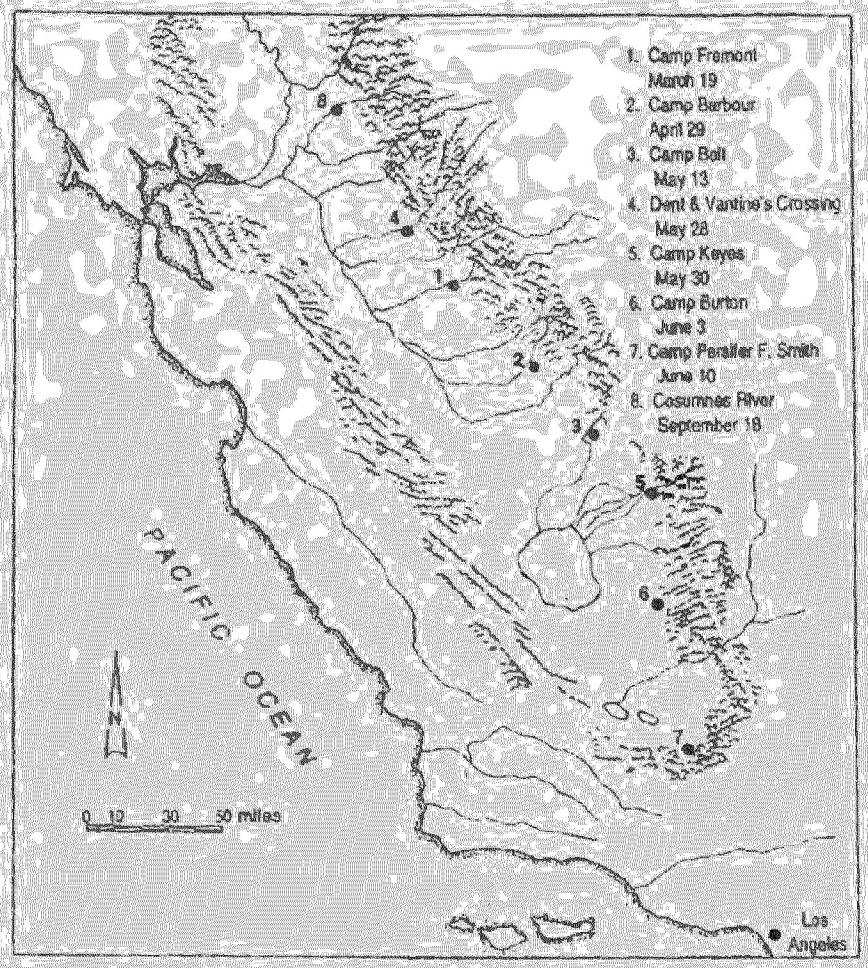

Treaty Sites, 1851

FIG. 1: TREATY NEGOTIATION SITES FROM PHILLIPS, AT 34.

On June 10, 1851, George Barbour, one of the Commissioners responsible for negotiating California Indian treaties, negotiated a treaty with eleven southern California tribes, including the Tejon Indian Tribe,[6] (the "1851 Treaty") at Camp Persifer F. Smith (site number 7 on the map above). Of note, Camp Persifer F. Smith appears to be located in the heart of Tejon territory. *See* map at Fig. 3. Article 1 of the 1851 Treaty asserts that that the signatory tribes are under the "exclusive jurisdiction, control and management of the government of the United States[.]" Article 3 of the 1851 Treaty described the metes and bounds of a territory to be reserved and "set apart and forever held for the sole use and occupancy of said tribes of Indians[.]" *See Treaty Made and Concluded*

[6] The 1851 Treaty uses the older spelling "Texon." Federal correspondence confirms that "Texon" in the 1851 Treaty is simply a spelling variation of the Tejon Indian Tribe. For example, Indian agent Asbury wrote in 1914 that early reports described an 1851 treaty with the Tejon Indian Tribe. *See* August 18, 1914 Letter from Special Indian Agent Asbury to Commissioner of Indian Affairs (**Exhibit 8**). Similarly, Special Assistant to the Attorney General George Fraser, the attorney responsible for the prosecution of the suit filed in 1920, also noted that the Tejon Indian Tribe treated with the United States in 1851. *See* June 29, 1921 Memorandum from George Fraser, Special Assistant to the Attorney General to the Attorney General (**Exhibit 25**).

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at Camp Persifer F. Smith, at the Tecan Pass, State of California, June 10, 1851, Between George W. Barbour, United States Commissioner, and the Chiefs, Captains and Head Men of the "Castake," "Tecon," & c., Tribes of Indians (**Exhibit 1**). This is the classic language used by the United States in Indian treaties to establish and confirm the existence of an Indian reservation. Indeed, the federal policy of concentrating Indian tribes on reservations to better control and manage relations with them was first implemented in California, as reflected in the 1851 Treaty. *See Cohen's Handbook of Federal Indian Law*, § 1.03[6][a], at 65 (2005 ed.) [hereinafter *Cohen's*]. Those reserved lands included Tejon Canyon and environs, the aboriginal home of the Tejon Indian Tribe. Six chiefs signed the treaty for the Tejon, including two brothers known as Vincente and Chico.

Although Commissioner Barbour submitted the treaty – as well as 17 others negotiated that year in California – to the United States Senate for ratification, none of these was ratified. Rather, California's senators persuaded their colleagues to consider the proposed treaties in secret session, wherein the Senate not only failed to ratify them but actually directed that the treaties be locked away and shielded from public disclosure. The very existence of the treaties was forgotten until they were discovered a half-century later. *See Karuk Tribe of California v. Ammon*, 209 F.3d 1366, 1371 (C.A. Fed. 2000) (**Tab D**). As demonstrated by the Tejon litigation discussed below, the Senate's refusal to ratify the treaties ultimately had devastating effects on Indian title throughout the state. In March of 1851, Congress enacted legislation to ascertain and adjudicate private land claims within California. *See* 9 Stat. 631 (**Tab E**). The 1851 Act provided for the creation of a Board of Commissioners to determine which title claims had been recognized by the Mexican government and thus would be recognized by the United States. It further required that all claims be presented to the Commission within two years. Claims not filed within the two-year deadline were to be regarded as abandoned. The Commission failed to notify the California tribes of the requirements of the Act and as result, many years later the Supreme Court determined that land patents issued by the Commission to non-Indians for aboriginal tribal lands could not be disturbed where tribal aboriginal title had not been perfected in accordance with the 1851 Act. Hence, the vast majority of Indian aboriginal title in California was extinguished.

1853 – 1862
The Establishment of a Military Reservation for the Tejon Indians

Now that most California Indian title had been extinguished, Congress acted in 1853 to authorize the creation of up to five military reservations in California "for Indian purposes[.]" 10 Stat. 238, ch. 104 (**Tab F**). Superintendent of Indian Affairs in California E.F. Beale immediately proceeded to meet with California tribes to establish these reservations, one of which would come to be known as the Tejon reservation. Originally called the "Sebastian Military Reservation," the Tejon Reservation included the Tejon Indian Tribe's villages in the Tejon Canyon. *See* Aug. 18, 1914, Letter from Asbury to Commissioner of Indian Affairs, at 2 (**Exhibit 8**); Philips, at 120 (noting that the official name of the Tejon Reservation was the Sebastian Military Reserve).

In a report to Commissioner of Indian Affairs Manypenny, Beale described the two-day meeting he had held at Tejon Pass with the local tribes prior to setting up the military reservation. Manypenny had explained to the local tribes at that meeting that the federal government's intention was to take control over the tribes' affairs and to provide them with means to support themselves by farming. According to Beale, the tribes acceded to the plan, so long as they were not required to leave the Tejon Valley. Beale noted:

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> To all this I had no difficulty in bringing them to assent. A difficulty, however, arose here, which it was very hard to overcome. This was, their disinclination to leave their old homes and hunting grounds and to settle so far away from them, and I found it utterly impossible to overcome this difficulty until I had promised them that the Reserve selected for them would be somewhere in the vicinity of the place where that conference was held.
>
> * * *
>
> The Tejon Valley or at least a large portion of it, is said to be covered by a Spanish grant but as I found no settlers on it or any evidence that it had been settled, and under the fact that there was no other place where the Indians could be placed without the same objections, I concluded to go on with the farming system at that point, and leave it to Congress to purchase the land, should the title prove good, or remove the Indians to some less suitable locality.

See September 30, 1853 Letter from Superintendent Beal to Commisioner Manypenny (**Exhibit 2**). Thus was established in practice a reservation[7] for the Tejon Indian Tribe, and thus was confirmed the trustee-ward relationship between the United States and the Tejon Indian Tribe. See maps of the Tejon Reservation at Figures 2 and 3 below.

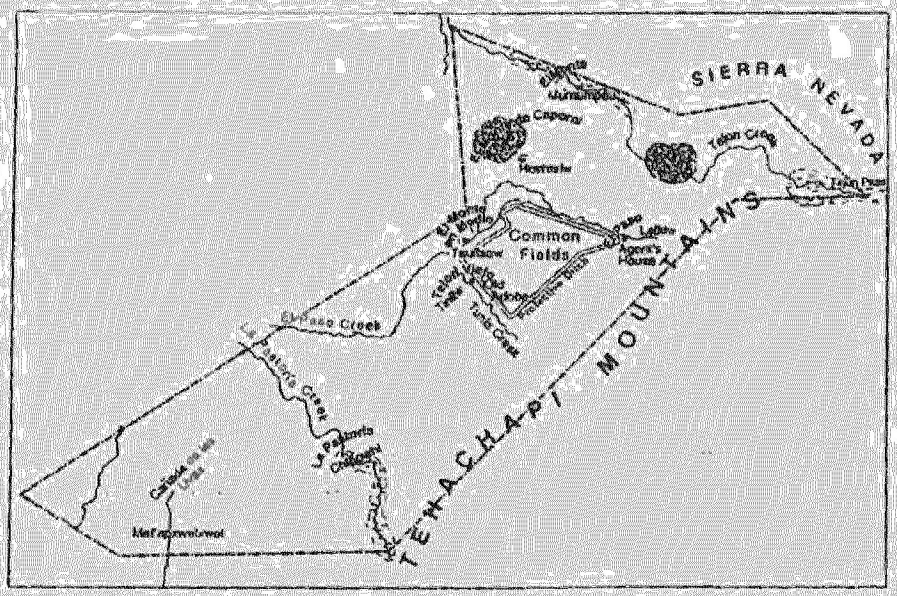

FIG. 2: MAP OF THE TEJON (SEBASTIAN) MILITARY RESERVATION FROM PHILLIPS, AT 121.

[7] The term "reservation" generally refers to an area set aside under federal protection for the residence or use of tribal Indians. *Cohen's*, § 3.04[2][c], at 189. DOI certainly acted to set aside what it referred to as the Tejon Reservation for the purpose of protecting the residence of the Tejon Indian Tribe. Thus, it was a reservation for all practical purposes.

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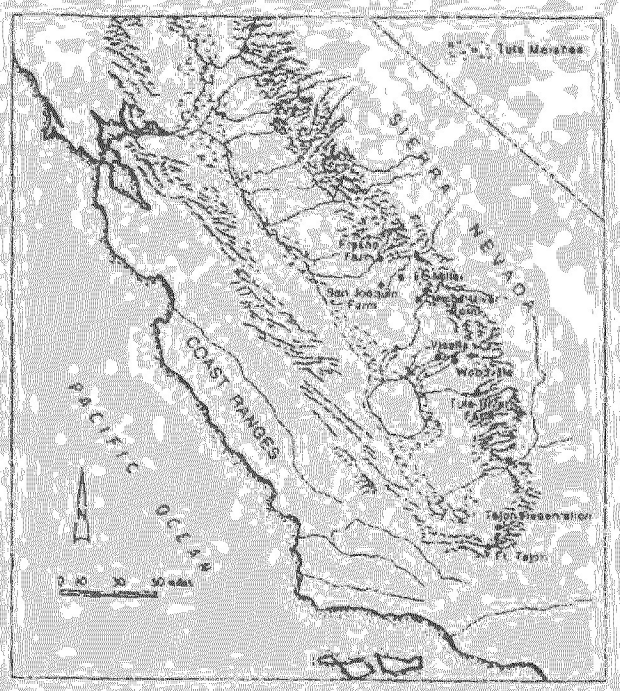

Towns, Forts, Indian Farms, and Tejon Reservation, 1850s

Figure 3: Map of California Showing the Tejon Reservation (and others) in the 1850s. From Phillips, at 151.

T. J. Henley, who succeeded E.F. Beale as Superintendent of Indian Affairs in California, made another report to Commissioner of Indian Affairs Manypenny the following year in 1854. Superintendent Henley again confirmed federal supervision of the reservation and the tribes living there when he reported:

> [I] have visited the Indian reservation at Tejon, (the only reservation at which, as yet, any Indians have been collected,) and have taken possession and supervision of the public property, schedules of which will accompany my report at the expiration of the quarter.

See August 28, 1854 letter from Thomas Henley, Superintendent of Indian Affairs in California to George W. Manypenny (Exhibit 3). Importantly, in this same report Henley observed that even though a number of tribes occupied the reservation, each was governed under the authority of their separate chiefs, who, at their own request, were permitted to exercise police authority over their respective tribes. *Id.*[8]

In 1862, the new Tejon Reservation Superintendent, John Wentworth reported to the Commissioner of Indian Affairs William P. Dole that the tribes in occupation of the Tejon reservation continued to prosper, and that they included the Kitanemuk, under their chief, Vincente, who had signed the 1851 Treaty. *See* August 30, 1862 Letter from John Wentworth, Superintendent

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[8] As Beale reported, BIA relocated other tribes to Tejon as well. However, the Tejon Indian Tribe is the only tribe to continuously occupy the area and, as result, the only tribe that could claim aboriginal title - a claim later made by the United States itself on the Tribe's behalf.

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to Commissioner of Indian Affairs (**Exhibit 4**). As his predecessors had done, Superintendent Wentworth noted the claimed Spanish grant to the area, and again recommended that the Tejon reservation be surveyed and set aside by an act of Congress for the exclusive use of the Indians living there. *Id.*

1862 – 1914
The Gradual Transfer of Reserved Lands to Private Ownership; Continued Occupancy by the Tejon Indian Tribe

As often mentioned in Bureau of Indian Affairs reports, a Spanish grant to the region had been made in 1843. The grant expressly forbade interference with the Indians established in the region. The Board of Commissioners later established by Congress to perfect private land titles in California confirmed the grant, but also noted the restriction in favor of Indian use and concluded, "[t]his, however, is a question cognizable before another tribunal." *See* United States Complaint at V and VI, *United States v Title Insurance & Trust Company*, (S.D. Calif.), filed Dec. 20, 1920 (**Exhibit 71**). Nevertheless, former Indian agent Beale had begun to buy for himself portions of the Tejon Valley as land became available through patents issued by the federal Board of Commissioners to private parties. By 1867, Beale had acquired 265,215 acres of the Tejon Valley, encompassing most or all of the Tejon Indian Tribe's aboriginal territory. *The Story of El Tejon, supra*; Phillips, at 254.

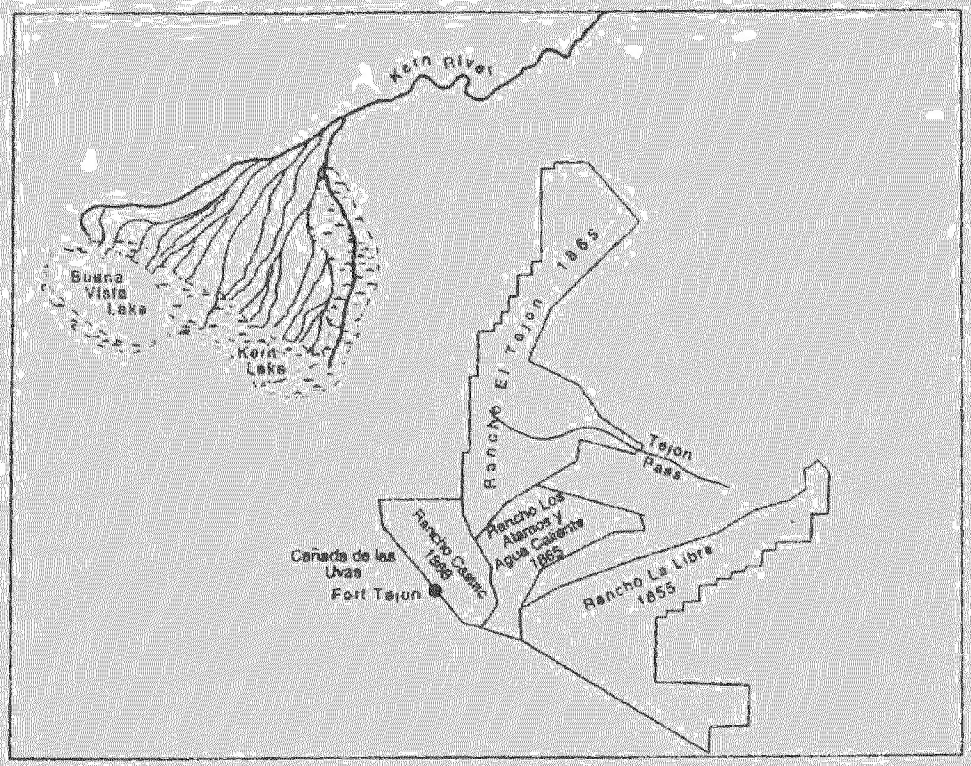

FIGURE 4: MAP OF THE LAND ACQUISITIONS OF FORMER BIA COMMISSIONER BEALE.
From Phillips, at 255.

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As long as the Beale family held title to lands within the Tejon Pass, the Tribe's possession of its home and farming sites remained undisturbed and peaceable. *See* May 23, 1914 Letter from C.E. Kelsey to Special Agent Asbury (**Exhibit 5**); October, 1916 Department of the Interior Litigation Request to Department of Justice to protect the El Tejon Indians, at 2 (**Exhibit 20**). Things changed dramatically, however, when Former Commissioner Beale's son conveyed title to the ranch to a Los Angeles business consortium around 1911. *See* **Exhibit 20**, at 2, 3.

1914 – 1924
Private Landowners Discourage Tejon Occupation of Aboriginal Lands; Interior Efforts to Establish the Tribe's Title to Tejon

Almost immediately after the sale of Tejon lands to a Los Angeles business consortium known as the "Tejon Ranch Syndicate," officials at the Department of the Interior began to receive frantic reports from sympathetic local non-Indians that the new owners of the Tejon Ranch were trying to evict the Tejon Indian Tribe from its aboriginal territory – from the lands the Tribe had occupied since time immemorial. *See* August 19, 1914 Letter from Special Indian Agent Asbury to Mr. Harry Chandler, Los Angeles Times (**Exhibit 9**); September 8, 1914 Letter from Special Indian Agent Asbury to Commissioner of Indian Affairs (**Exhibit 10**) (enclosing reply from Tejon Ranch).

Interior reacted immediately, as is documented by a lengthy internal discussion among its own staff about how best to protect the Tribe. BIA's Central Office inquired from affected local BIA offices about the advisability of withdrawing land from the public domain for the benefit of the Tejon Indian Tribe, and it instructed special Indian agents to investigate the conditions of the Tribe. These inquiries generated numerous letters and reports between special Indian agents and the Commissioner of Indian Affairs. As a protective measure, on May 15, 1914, the Department issued an order temporarily reserving all vacant lands in the area (approximately 10,000 acres) but the following year revoked the Order. *See* **Exhibit 20**, at 3. A little more than a year after revoking that Order, Interior requested that the Department of Justice institute litigation to protect the Tribe's interests. *Id.* The report from the Department of the Interior requesting litigation noted that the Tribe "maintain[ed] tribal relations and the record evidences a continued occupancy of these lands for at least 100 years." *Id.* at 1. As discussed herein, these reports unanimously reflected the Bureau of Indian Affairs' view that public lands should be withdrawn for the Tribe if necessary. These reports also document the federal government's numerous and unsuccessful attempts to purchase some portion of the Tejon Ranch for the Tribe, and all repeated the numerous representations by the ranch owners that the Tribe would not be disturbed in its occupation of the ranch, so long as nominal rents[9] were paid and tribal members were compliant and available to work as employees of

[9] Upon learning that the Syndicate had requested tribal members to enter into leases of their aboriginal lands for a nominal rent, Assistant Commissioner Meritt wrote to the Syndicate requesting "information as to the nature and terms of the lease into which your company would be willing to enter, *in order that the Office may take prompt action thereon in the interest of these Indians.*" *See* November 23, 1915 Letter from Assistant Commissioner E.B. Meritt to Mr. Harry Chandler, Los Angeles Times (**Exhibit 12**). The Ranch responded curtly emphasizing that they would not sell any of the Ranch to the Department for the benefit of the Tribe. *See* December 4, 1915 Letter from Harry Chandler to Assistant Commissioner E.B. Meritt (**Exhibit 13**).

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the Tejon Ranch. *See* series of Bureau correspondence provided at **Exhibits 6, 7, 8, 14, 15, 16, 17, 19.**[10]

While this correspondence together demonstrates a pattern of guardianship behavior toward the Tejon Indian Tribe, three special Indian agent reports warrant particular mention. The first of these, written by Special Agent C.H. Asbury on August 18, 1914, recounts the history of Tejon summarized above and Interior's active supervision of the Tribe's affairs. *See* **Exhibit 8.** Asbury expressed the view that it was unlikely that the owners of the Tejon Ranch would be willing to sell any land to the Government for the Tribe and so recommended that the federal government consider withdrawing lands nearby from the public domain for the Tribe.

The second report of particular mention was written by Indian agent J.J. Terrell on December 12, 1915 (**Exhibit 14**). In it, Terrell detailed the harsh conditions imposed by the Tejon Ranch owners on the Tejon Indian Tribe:

- tribal members were not permitted to increase their livestock holdings to any extent;
- tribal members were not permitted to own any cattle, including milk cows;
- the Tejon Ranch had locked and forbidden use of a small church built by the Catholic Church for the Tribe's use;
- the Tejon Ranch had denied the Tribe use of a school house built by the county;
- Chief Lozada's house had been burned to the ground during his absence; and
- by written notice delivered to Chief Lozada on June 28, 1915, the Tribe was instructed not to place any improvements or buildings on the land unless they first signed a lease with the ranch giving them permission to do so.

Terrell also included a census of tribal members at the time, identifying 81 in total. (While Terrell in fact lists 81 tribal members, he miscounted them when he identified them as totaling 79 in number.) *See* "Terrell Census" at **Exhibit 14.** Shortly after Terrell's December 12, 1915 report, the Tejon

---

[10] **Exhibit 6** is a May 14, 1914 Letter from Commissioner of the General Land Office Clay Tallman to First Assistant Secretary A.A. Jones. **Exhibit 7** is a May 21, 1914 Letter from Assistant Commissioner E.B. Meritt to Special Agent Calvin M. Asbury. **Exhibit 8** is a August 18, 1914 Report from Special Indian Agent Asbury to Commissioner of Indian Affairs. **Exhibit 14** is a December 12, 1915 Report and census from special Indian Agent John Terrell to Commissioner of Indian Affairs. **Exhibit 15** is a December 15, 1915 Letter from Assistant Commissioner E.B. Meritt to Special Indian Agent J. J. Terrell. **Exhibit 16** is a January 7, 1916 Letter from Assistant Commissioner E.B. Meritt to Superintendent Tule River School Frank A. Virtue. **Exhibit 17** is a March 6, 1916 Letter from Special Indian Agent John Terrell to Commissioner of Indian Affairs. **Exhibit 19** is a September 21, 1916 Letter from Special Commissioner Indian Service John J. Terrell to Commissioner of Indian Affairs.

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Ranch demanded that Chief Lozada leave the ranch and thereafter initiated litigation to evict him. *See* Complaint *Elliott v Lozada*, at **Exhibit 18.**

The third noteworthy report, also written by Terrell, was addressed to the Commissioner on Indian Affairs and dated September 21, 1916 (**Exhibit 19**). This report confirmed the futility of efforts to purchase land for the Tribe elsewhere in light of the Tribe's firm attachment to its aboriginal territory:

> The Office should understand all the older and middle aged Indians of this band, in fact all but a few of the younger children, are full bloods, and except Chief Lozada, are without any education and but few have even a slight knowledge of the English language; that all have lived on present locations, or very close, in sight, all their lives; knowing no other locality, but little of other people or environments; and Indian-like, and more under the circumstances with these, are more ignorantly and persistently attached than ordinarily to the Tejon Canyon and its narrow thread of valley land where nestles their little cabin homes. It is but natural that in and around this spot of a long life-time association clusters many sacred memories of, to them, eventful past. Their dead as far back as they know are sleeping their last sleep within their every day sight.
>
> It will unquestionably prove a most difficult task to remove these Indians very far from present location, evidently it would require force to remove them.

A copy of this letter is provided at **Exhibit 19**. The effect of these reports was two-fold: the Department of the Interior would recommend litigation against the private owners of the Tejon Ranch, and it would make efforts to purchase or set aside alternative land for the Tribe.

As discussed above, Interior worked to try to protect the Tribe's right to occupy its aboriginal territory at Tejon Ranch by recommending to the Department of Justice that a suit be filed "to protect these Indians [the 'El Tejon band of Indians'] in the lands now occupied by them." *See* **Exhibit 21** at 1. The October litigation request recounted the Department's efforts to reserve land for the Tribe and indicated that even if litigation were unsuccessful, the pending suit could facilitate land acquisition for the Tribe by placing the Syndicate "in a position where it would be willing to compromise the matter by a sale to the United States at a reasonable price of the lands occupied by the Indians. The Office has funds available from which such a purchase might be made, if it should be recommended by the Department of Justice." *See* **Exhibit 20** at 6.

Shortly after Interior's request to the Department of Justice, Interior tried to provide further protection to the Tribe by ordering 880 acres of land be withdrawn from the public domain "for the use of the El Tejon band of Indians, Kern County, California" ("Withdrawal Order"). *See* **Exhibit 21.** The Withdrawal Order was intended to be a backstop in the event the litigation was unsuccessful:

> Attention is also invited to the letter of the Department dated October 25, 1916, to the Attorney General, recommending the

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> institution of a suit to protect these Indians in the lands now occupied by them. However, should the United States be unsuccessful in this suit, the Office believes it would be advantageous to have the foregoing lands reserved for the use of the Indians. Since it is not now certain that they will be ejected, the Office believes that at present only a temporary withdrawal is necessary.

Id.

In the months following Interior's request to the Department of Justice to file affirmative litigation to protect the Tribe's rights to its aboriginal lands, the United States Indian Irrigation Service prepared a report and map of Tejon lands. The map, shown below, depicts lands used by the Tribe as well as lands that could be irrigated by the Tribe. This map was eventually included with the United States' filings in its litigation before the Supreme Court. The accompanying report summarized the history of the Tribe and its aboriginal lands.[11] *See* **Exhibit 22.** As described in more detail below, this suit was an extraordinarily strong expression of the United States' guardianship over the Tribe.

[11] Pages 5 and 6 of the Report appear to be forever lost as they are missing from the microfilm copy of the Report.

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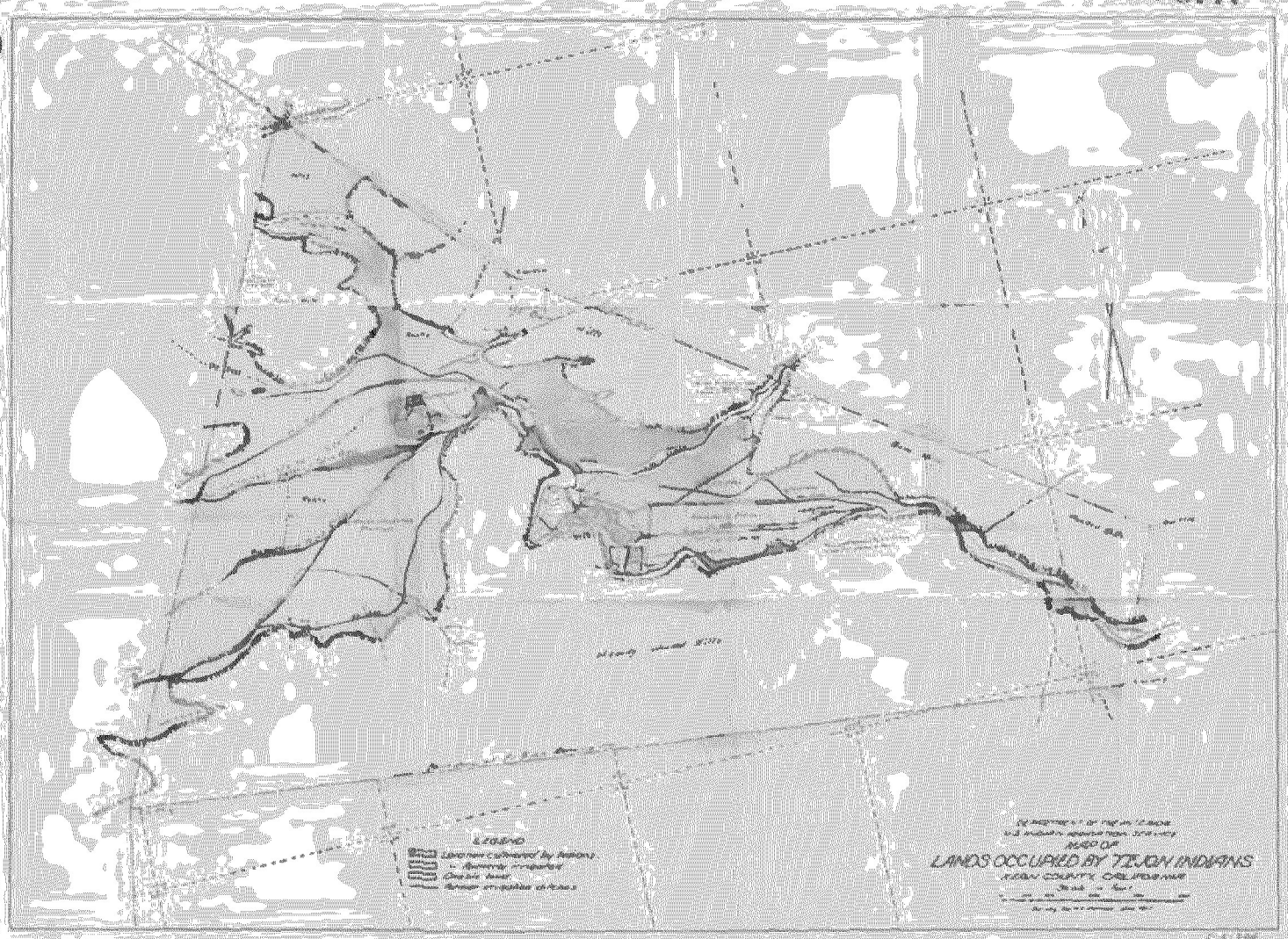

FIGURE 5: DEPARTMENT OF THE INTERIOR, U.S. INDIAN IRRIGATION SERVICE MAP OF THE LANDS OCCUPIED BY TEJON INDIANS KERN COUNTY, CALIFORNIA

From Case Appendix for *United States v. Title Insurance & Trust Co.*, Supreme Court of the United States, October Term, 1923.

1920 – 1930
The United States Brings Land Claim Litigation on Behalf of the Tribe; Alternative Means Considered to Establish Land Base for Tribe – Purchase or Condemnation

On December 20, 1920 the United States Department of Justice filed the suit in federal district court to try to secure the Tribe's rights to its aboriginal territory.[12] In its bill of complaint the

[12] Before it filed the suit, the Department of Justice made one final effort to settle the claim with Tejon Ranch and acquire title to land for the Tribe. A special assistant to the Attorney General assigned to the case wrote the ranch owners, advising of the Tribe's aboriginal title claim, complaining that the ranch effectively treated tribal members as "peons," and threatening possible condemnation if the litigation failed. Still, the ranch refused to sell any land to the

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United States set out the history of the Tribe and explicitly asserted that the Tejon Band or Tribe of Indians were presently and had been wards of the United States since the signing of the Treaty of Guadalupe Hidalgo in 1846, and it maintained that the "tribe or band of Tejon Indians became, were and are entitled to the full, undisturbed, and continuous occupancy, possession and use of the premises hereinabove described[.]" *See* Complaint at **Exhibit 71**. The United States explained that it filed the litigation at the request of the Secretary of the Interior

> in furtherance of its Indian policy and also in its capacity, and to discharge its obligations, as guardian for sundry Indians known as the Tejon Band or Tribe of Indians now and from time immemorial residing on certain premises hereinafter described in what is now Kern County, California[.]

The United States further recounted the Tejon Ranch's[13] mistreatment of the Tejon Indian Tribe and its active and coercive efforts to circumscribe through the use of force the Tribe's use of its aboriginal lands. The United States' complaint asserted that its action was filed pursuant to the United States' general obligation to Indians. The United States' complaint also cited the specific trust obligation imposed by Congress on the Attorney General of the United States, upon request of the Department of the Interior, to defend tribal rights to lands occupied by them located within any confirmed private grant or to "bring any suit, in the name of the United States, . . . that may be found necessary to the full protection of the legal or equitable rights of any Indian or tribe of Indians in any of such lands." Act of January 12, 1891 (26 Stat. 712). *See* United States' Complaint at ¶ XI (**Exhibit 71**); a copy of the Act of 1891 is attached at **Tab G**. The litigation sought an order quieting title in the Tribe, including water rights, and a declaration that the Tribe maintained a "full and perpetual right and title to occupy, possess, use and enjoy said premises . . . *but without any right to sell, dispose of or encumber said title to said premises or any part thereof, except to or in favor of or with the consent of the United States.*" *See* United States' Complaint, requested relief at ¶ 2 (emphasis added) (**Exhibit 71**).[14]

The District Court dismissed the complaint because the Tribe had failed to perfect its Indian title claims under the California Claims Act of March 3, 1851, 9 Stat. 631. *See also United States v Title Insurance & Trust Co*, 288 F. 821, 823 (9th Cir. 1923) (discussing District Court's basis for dismissal)

Government for the Tribe and the lawsuit was filed. May 28, 1920 Letter from Special Assistant to the Attorney General George Fraser to Mr. Harry Chandler, Tejon Ranch Syndicate, at 5 (**Exhibit 23**); July 12, 1920 Letter from Special Assistant to the Attorney General George Fraser to Mr. Harry Chandler, Tejon Ranch Syndicate (If "our contemplated suit should . . . fail, it is our purpose to suggest to the Department of the Interior to acquire by condemnation enough of the territory in controversy for a permanent home for the Indians").

[13] Although commonly referred to as Tejon Ranch or the Tejon Ranch Syndicate, in its complaint the United States explained that since 1916 the Title Insurance and Trust Company was the alleged named owner in fee of at least a portion of the Ranch and that the United States believed that Harry Chandler and others who comprised the Syndicate claimed some right, title or interest in the estate. See **Exhibit 71**, United States' Complaint at ¶ IV. Thus, the Title Insurance and Trust Company and the Tejon Ranch Syndicate for all practical purposes were functioning as the same entity.

[14] While the litigation was pending, the Interior informed the Attorney General that funds were available to purchase the Tribe's lands if the Syndicate would sell. If the Syndicate refused to sell, Interior requested that the Department continue with the litigation. *See* January 12, 1921 Letter from the Assistant Secretary to the Attorney General (**Exhibit 24**).

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(Tab H); and *see* discussion *supra* about the California Claims Act and how it was used to extinguish almost all Indian title in California. The Ninth Circuit Court of Appeals affirmed the District Court's dismissal on this ground, but specifically observed that the United States had brought the suit "[i]n the capacity of guardian of a band of mission Indians incompetent to manage their own affairs, known at the Tejon Indians, residing on a described tract of land in Kern County, California[.]" *United States v Title Insurance & Trust Co*, 288 F. 821, 822 (9th Cir. 1923). The United States, refusing to abandon the Tejon Indian Tribe, then sought review in the Supreme Court. Once again, before the Supreme Court, the United States expressly acknowledged its role as trustee for the Tribe:

> [A]t the request of the Secretary of *the Interior in furtherance of the Indian policy of the Government, which is here acting as guardian of a band or tribe of Mission Indians, wards of the United States*, and incompetent to manage their own affairs, known as the Tejon Indians. . . .

United States' Brief at 2, filed in *United States v Title Insurance & Trust Co*, 265 U.S. 472 (1924) (emphasis added) (**Exhibit 71**). Unfortunately, the Supreme Court affirmed a rationale which has become famous (or infamous) for having finished the nefarious work started by the 1851 Senate. The Supreme Court confirmed that the Tribe's aboriginal title had been effectively extinguished by virtue of the Tribe's failure to comply with the arcane title perfection requirements imposed by the 1851 California Claims Act (regardless of whether the Tribe had actual or constructive notice of those requirements). 265 U.S. 472 (1924).

Throughout this litigation, the United States asserted, and neither the opposing party nor any court disputed, the United States' trust responsibility on behalf of the Tejon Band of Indians. The opening sentence of the Supreme Court's decision confirms as much, wherein the Court stated:

> This is a suit by the United States as guardian of certain Mission Indians to quiet in them a "perpetual right" to occupy, use and enjoy a part of a confirmed Mexican land grant in southern California, for which the defendants hold a patent from the United States.

United States v Title Insurance & Trust Co, 265 U.S. 472, 481 (1924)(**Tab C**).

Within a week after the Supreme Court's negative decision, Interior began efforts to purchase land for the Tribe. In an exchange of correspondence between the Commissioner of Indian Affairs' Office and local BIA Superintendent Lafayette A. Dorrington, Dorrington was authorized to expend up to $7,900 from appropriated funds of the fiscal year beginning July 1924 to procure a home site for the Tribe. *See* **Exhibits 26 and 27**.[15] Assistant Commissioner E.B. Meritt immediately authorized Superintendent Dorrington to negotiate the purchase of options for a home site for the Tribe. **Exhibit 27**. Dorrington first tried to buy back some of the Tribe's aboriginal territory from the Tejon Ranch owners, but eventually he had to advise the Commissioner of Indian

[15] **Exhibit 26** is a June 14, 1924 Telegram from Assistant Commissioner E.B. Meritt to F.G. Collett ("Decision of Lower Court in El Tejon case affirmed. Immediate steps will be taken for the relief of Indians to extent of funds available."; **Exhibit 27** is a June 19, 1924 Letter from Assistant Commissioner Meritt to Superintendent L.A. Dorrington (confirming that Dorrington is already authorized to use $7,900 for acquisition of land and that "the conditions will justify our using [the] entire [fiscal year 1925] appropriation for the Tejon Indians[.]"

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Affairs that the Tejon Ranch owners refused to sell a tract to the United States. Dorrington repeated the Tejon Ranch owners' assurances that the Tribe could remain on Ranch lands so long as no further claims were made against the Ranch and the Indians lived in accordance with rules set by the Ranch. Further, Dorrington found that the Tribe itself refused to move from its traditional lands. Hence, Dorrington concluded that while another attempt might be made in the future, the status quo appeared to be the best arrangement for the time being. *See* October 18, 1924 Letter from Superintendent L.A. Dorrington to Commissioner of Indian Affairs (**Exhibit 29**).

On September 12, 1924, the Secretary of the Interior informed the Attorney General that the superintendent "who has jurisdiction over the Tejon Band of Indians" had been instructed to ascertain whether a written agreement could be reached with the Tejon Ranch to secure the continued occupation of the Tribe; the Secretary also indicated a willingness to consider condemnation as a means to secure the Tribe on its land. *See* September 12, 1924 Letter from Secretary of the Interior Hubert Work to the Attorney General (**Exhibit 28**). Once again, the owners of the Tejon Ranch declined to sell. The BIA Superintendent continued to assure Interior Central Office that the Indians were allowed to remain "on the same land occupied by them for many years, and without any objection." *See* October 18, 1924 Letter from Superintendent L.A. Dorrington to Commissioner of Indian Affairs (**Exhibit 29**). Eventually, the Acting Secretary E.C. Finney advised the Attorney General that, in light of present conditions, no immediate action needed to be taken to condemn a portion of the land for the Tejon Indian Tribe. *See* November 8, 1924 Letter from Acting Secretary of the Interior E.C. Finney to Attorney General (**Exhibit 30**).

1920s – 1940s
Interior Continues to Acknowledge the Tribe after the 1924 Supreme Court Decision

During this period, Interior continues explicitly to acknowledge the Tribe, regardless of the Supreme Court's 1924 land claim decision in *United States v. Title Insurance and Trust Co.* Of particular note, in 1929, Interior's Office of Indian Affairs compiled and published a list entitled "Indian tribes of the United States." *Indian Tribes of the United States*, Bulletin No. 23 (1929). The Tejon Indian Tribe is specifically identified on that list under the jurisdiction of the Sacramento agency. *See* **Exhibit 33**. In 1938 and again in 1941, the Office of Indian Affairs compiled lists of reservations and rancherias, identifying Kern County as a rancheria location. *See* January 18, 1938 Agencies under the jurisdiction of the Office of Indian Affairs by Reservation and County (**Exhibit 37**); April 1, 1941 Agencies under the jurisdiction of the Office of Indian Affairs by reservation or area, and county (**Exhibit 38**). As discussed below, BIA by this date had come to refer to Tejon as "El Tejon Rancheria." Under the Sacramento Agency, California, both lists identify the existence of Rancherias in Kern County, no doubt referring to the El Tejon Rancheria.

Also during this period, Interior continued to monitor the living conditions of the Tribe and its treatment by the Tejon Ranch. *See* April 3, 1925 Letter from Assistant Commissioner E. B. Meritt to Superintendent Dorrington and May 8, 1925 response from Dorrington (**Exhibit 31**). On occasion, the BIA Superintendent investigated the status of the Tribe's condition, and after each such occasion he reported along the following lines:

> The Tejon Band, as you know, are allowed to continue their home status on the land they have occupied for many years, by the Tejon

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> Ranch Company, and are given preference for their labor by the ranch people, so long as they do not make further claims to the land so occupied.

December 16, 1925 Letter from L.A. Dorrington to Commissioner of Indian Affairs (**Exhibit 32**); *see also* **Exhibits 31 and 34.**

Sometime in 1930, federal concerns about the welfare of the Tribe reached as high as the Office of the Vice President. On June 26, 1930, the Secretary of the Interior responded to an inquiry from the Vice-President of the United States regarding the welfare of the Tejon Indian Tribe. The Secretary recounted the United States' effort to establish aboriginal title to lands for the Tribe by a lawsuit, and also described the Tribe's current condition:

> In regard to purchasing some of these lands for the El Tejon Indians it may be said that by a decision of the United States Supreme Court . . . title to the lands occupied by these Indians was in the Title Insurance and Trust Company . . . and that the Tejon Indians had no legal or valid title thereto or occupancy thereof. The company did not care to sell any of its lands.
>
> However, the owners have been leasing to the Tejon Band the particular tracts . . . for a nominal consideration of $1.00 per year. The procedure is, of course, merely for the purpose of having the Indians recognize the lessors as owners of the property.
>
> Correspondence in our files indicates that the Indians of the Tejon Rancho are free to do as they please without let or hinderance in regard to the privately owned lands which they occupy. As the situation in this case is viewed these Indians are generally industrious, self-supporting and contented under present conditions, and 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.

June 26, 1930 letter from Secretary of the Interior Ray Wilbur to Vice President Curtis (**Exhibit 34**). (Unfortunately we have not been able to locate the original letter from the Vice President.)

In March 1938, the Assistant Commissioner of Indian Affairs responded to an inquiry from a Bakersfield attorney about the purchase of lands for the Tejon Indian Tribe. The Assistant Commissioner's response observed that the Tribe peacefully occupied a "rancheria" and 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; nor is it deemed advisable to ask Congress for

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> legislation such as you suggest, especially as it would necessitate the appropriation of a large sum of money to pay for the lands involved.

March 28, 1938 Letter from Assistant Commissioner William Zimmerman to George W. Hurley, Esq. (**Exhibit 36**).[16] Of course, the Bureau's reluctance to spend appropriated funds in 1938 must be understood in the context of the limited resources available during the Great Depression. At no time does the Bureau of Indian Affairs raise lack of federal recognition or cessation of the trust responsibility as a reason not to acquire trust land for the Tribe.

1916 – 1953
Interior Assumes and Exercises Responsibility for the Education of Tejon Children.

Throughout much of the twentieth century, the Bureau of the Indian Affairs assumed responsibility for the education of Tejon children. In 1915, Special Indian Agent Asbury recommended to the Commissioner of Indian Affairs that the Bureau cooperate with Kern County to provide educational facilities for the Tejon children. At the same time, Asbury wrote to the Superintendent of Schools for Kern County, proposing to contract with the county for the payment of tuition for Tejon children. In 1915, the Bureau had not yet decided to pursue litigation to secure the Tribe's title to its aboriginal home. Accordingly, Asbury also wrote to the Tejon Ranch owners, expressing concern about the education of Tejon children and offering to work with the Ranch and the County to establish a school within the Tejon village (and offering, again, to purchase land for the Tribe from the Ranch). *See* **Exhibits 11, 46 and 47.**[17] In 1916 and 1917, the Department approved contracts with Kern County and provided funding to educate Tejon students at a school approximately six miles from the Tribe's village. *See* **Exhibits 48, 49, 50, and 51.**[18] However, Chief Lozada objected to the removal of Tejon children to county schools, and so after two years of negotiations, the Bureau and the County entered into a contract whereby the Bureau paid tuition costs for a school operated by the county on the Tejon Ranch. *See* **Exhibits 52 and 53.**[19]

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[16] Nonetheless, there is evidence that the BIA expended housing funds in support of the Tribe during this period. A newspaper article reported that "in 1935, the government added two rooms to each house [on Tejon ranch] for the families that wanted more room[.]" A 1936 letter from a tribal member to the Sacramento Agency requesting assistance with housing similar to that provided to other tribal members corroborates this article. The article and the 1936 letter are provided at **Exhibit 35.**

[17] **Exhibit 11** is a January 25, 1915 Letter from Special Indian Agent Asbury to Mr. Harry Chandler, Los Angeles Times. **Exhibit 46** is an April 13, 1915 Letter from Special Indian Agent Asbury to Commissioner of Indian Affairs. **Exhibit 47** is a May 6, 1915 Letter from Special Indian Agent Asbury to Mr. Harry Chandler, Los Angeles Times.

[18] **Exhibit 48** is a December 18, 1916 Letter from Special Agent Asbury to the Commissioner of Indian Affairs. **Exhibit 49** is a November 22, 1916 Letter from Minnie McKenzie to Special Agent Asbury. **Exhibit 50** is a January 8, 1917 Letter from Assistant Commissioner E.B. Meritt to Special Indian Agent L. A. Dorrington. **Exhibit 51** is an April 30, 1917 Letter from Acting Assistant Commissioner C.F. Hauke to Secretary of the Interior, transmitting contract for education of Tejon tribal members.

[19] **Exhibit 52** is a June 25, 1917 Letter from Special Indian Agent Dorrington to Commissioner of Indian Affairs. **Exhibit 53** is a June 15, 1917 Letter from Minnie McKenzie to Special Indian Agent L.A. Dorrington.

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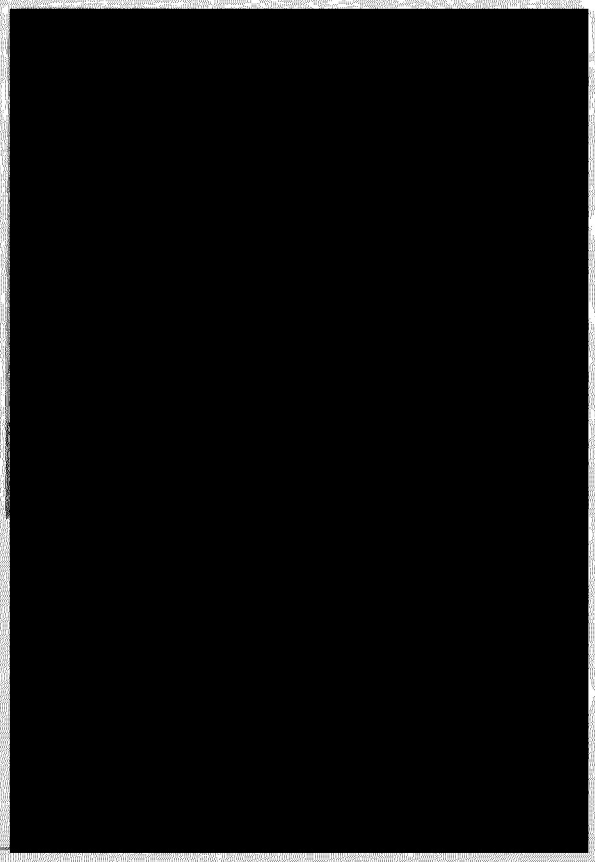

FIG. 6: PHOTO OF [redacted] TAKEN BY EDWARD S. CURTIS, ABOUT 1916

In 1920 the Trustees of the Indian School District for Kern County entered into a lease agreement with the Tejon Ranch owners to arrange for the use of Ranch property on which could be built a school for Tejon children. *See* Lease between the Title Insurance and Trust Company and the Indian School District (**Exhibit 56**); December 27, 1920 Justification (**Exhibit 57**). Reflecting the Tribe's and the Ranch owners' competing claims to the Tribe's aboriginal lands, in 1922 a contract between the Bureau and the Trustees of the Indian School District (of which Chief Lozada was a trustee) provided for the use of the premises and the building by the County "for and in consideration of instruction given unto Indian children, *wards of the Federal Government*, by Public School District El Tejon, Kern County." *See* Lease between Joe J. Taylor, Superintendent & Physician of the Tule River Indian School and Agency, Porterville, California on behalf of the United States and the Trustees of Indian School District (**Exhibit 55**) (emphasis added); *see also* April 24, 1920 Letter from Special Assistant to the Attorney General to the Attorney General (explaining concern that lease not prejudice Government's litigation) (**Exhibit 54**). The school built on that property is shown in the photograph below.

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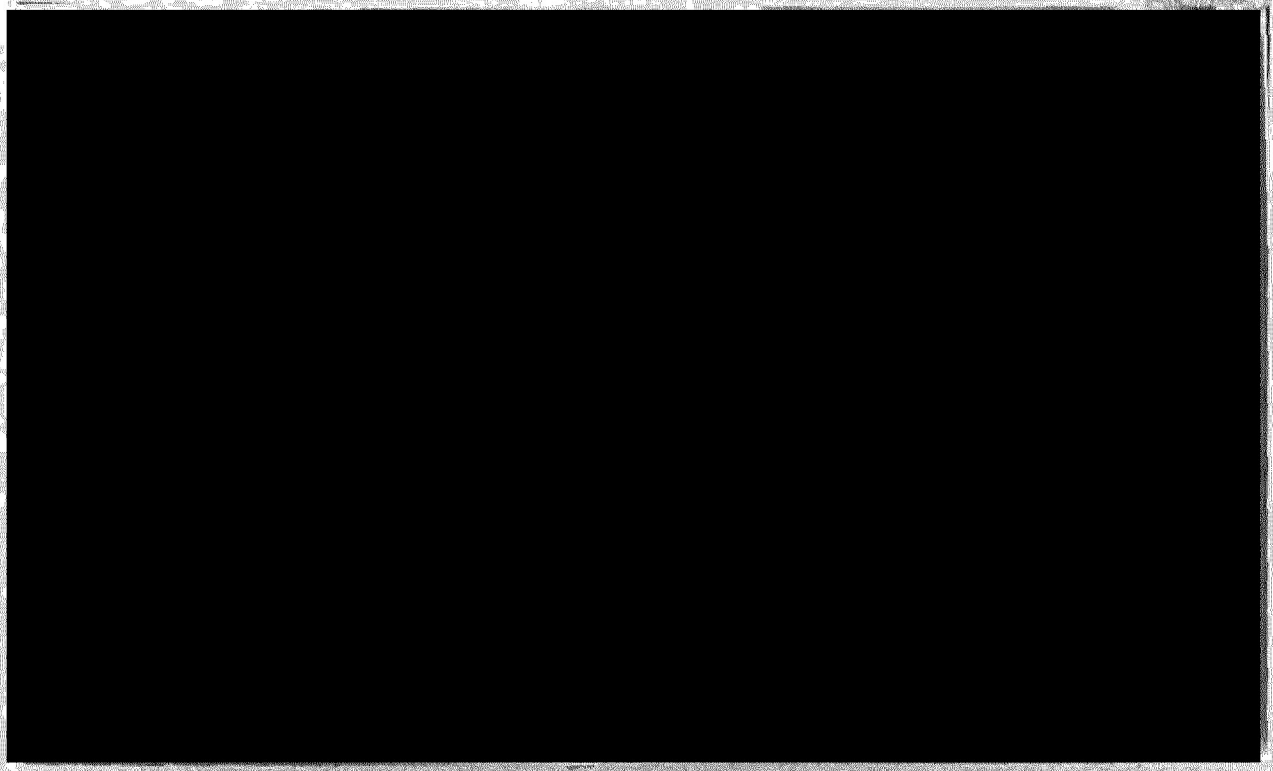

Tejon Indian Reservation, Kern County

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FIG. 7: PHOTOGRAPH OF TEJON INDIAN SCHOOL
This photograph was taken about 1922 at the Tejon Indian School. The original is located in the California State Library photograph collection (Neg. # 22,361). [redacted]

This federal arrangement for the education of Tejon children continued for decades. Indeed, the BIA-funded school at the Tejon Ranch continued to operate until 1948, closing a few years after the long-time teacher at the school retired. *See* December 28, 1923 Letter from Superintendent Dorrington to the Commissioner of Indian Affairs regarding school contracts; (**Exhibits 58, 59**); January 16, 1926 Letter from Assistant Commissioner Merrit to Superintendent Dorrington authorizing funds for Tejon School (and related correspondence) (**Exhibit 60**); November 23, 1926 Letter from Assistant Commissioner Merrit to Superintendent Dorrington authorizing funds for Tejon School (and related correspondence) (**Exhibit 61**).[20] The retirement of

[20] The collection includes a 1920 letter from the Special Assistant to the Attorney General assigned to handle the Tejon lawsuit addressed to the Attorney General. Among other matters, the Special Assistant Attorney General notes that the county expects the Government to pay a part of the costs of erecting a school building for the Tejon children. He urged that this be done in such a way that it not prejudice the Government's case against the ranch in the property claim it filed on the Band's behalf. Incidentally, the Special Assistant to the Attorney General also noted that he had consulted with "Mr. Virtue, the Superintendent of the Tule River Indian Reservation, under whose jurisdiction these Tejon Indians come." *See* **Exhibit 54**.

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the school's teacher (Anna Knowles) generated yet another investigation by Interior to ascertain the status of the Tejon school and its students.

In his report to the Commissioner, the Superintendent of Sacramento Indian Agency (John Rockwell) briefly recounted the history of the Tribe at Tejon and concluded that the "El Tejon School" had been built with federal funds. He recommended that the school be closed and any salvageable material be transferred for use at the Sunset School (run by the County) to which the Tejon children would now be transported. Superintendent Rockwell also made the following observation about the Tribe:

> It should, however, be borne in mind that here is a stable and small Indian population of perhaps ten or twelve families who have always lived on El Tejon Ranch and would probably continue to live there for a considerable period of time. I think it would be a better idea to have the school closed and the children transported to the Sunset School, as is now planned by Superintendent Hart.

May 29, 1945 Letter from Superintendent Rockwell to Commissioner of Indian Affairs(**Exhibit 62**); *see also* September 12, 1945 Letter from Guy Williams, for the Commissioner to Superintendent Rockwell (**Exhibit 63**). After 1948, Tejon children living at Tejon Ranch were bused to public schools or attended BIA boarding schools.

Over the years, at least 26 Tejon children attended Sherman and Chemawa BIA boarding schools, some as late as 1953. These school records identify these individuals as Tejon tribal members and also note their blood quantum. *See* **Exhibit 64** (collection of Sherman and Chemawa records). Tejon tribal elders still alive today attended Sherman as late as the spring of 1948, when the School's regular elementary and high school programs were discontinued to allow the facility to be used solely for a special program for Navajo youth. *See* History of Sherman Indian High School, as found on the Sherman School website, www.sihs.net/history (**Exhibit 65**).

It is clear from the Sherman School Records that the Sacramento Indian Agency not only approved applications of tribal members to Sherman, but that the Bureau of Indian Affairs at times arranged for transportation of tribal members to the Sherman Institute. *See* **Exhibit 64**.[21] The active federal oversight of education for Tejon members is reflected in a recommendation for approval of issued in 1947, wherein a BIA official explained:

> The family home is on the El Tejon Ranch, where they have always lived as well as their parents and grandparents before them. It is in a remote area with no nearby public or federal high school and is not reached by school bus service. . . . They are full degree Indian and have never known any other students then Indian. . . . Government Boarding School is clearly the most feasible schooling that these

[21] For example, the records of Joe Rivera Montes and Albert Montes reflect federal payment of transportation costs to the school. Its readily apparent from a review of the Sherman School records that the Tejon Indian School served as a feeder school to the Sherman Institute. Many of the files contain correspondence and/or placement recommendations from Anna Knowles, the long-time teacher at the Tejon Indian School.

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children can have, and for this reason they should be admitted without question in September.

Application of Nellie Hinio with recommendation by Mildred Van Every, Sacramento Indian Agency Social Worker (**Exhibit 64**).

By the mid 1950s all Tejon children by and large were being educated in non-Indian public schools. BIA's eventual shift to non-Indian public schools for Tejon children reflected a broader approach implemented by BIA in the 1930s to educate tribal children in California's public schools. Indeed, aside from the Sherman Indian Institute, the Tejon Indian school was the last operating Indian school in California. The next latest operating Indian school (Fort Mojave) closed a full decade before Tejon Indian School. *See* H. Rep. No. 2503, at 1572 (1952). *See* **Exhibit 66.**

Finally, in the 1960s, 70s, and 80s, Tejon members continued to receive some BIA educational services. In the early 1970s Juanita Montes' son, Leonard Montes (who is now deceased), received BIA funding for vocational training. In the late 1970s, Donna Montes attended Business School with the aid of BIA funding. And in the 1980s, Virginia Montes received BIA support for vocational training.[22]

1952 – 1962
Continued Federal Assistance

The private business consortium which owned the Tejon Ranch continued to pressure Tejon members to move from the land. Pressure on tribal members had begun soon after the Tejon Ranch had been purchased by the private business consortium in 1911. The Department of Justice's 1920 bill of complaint in the *Title Insurance and Trust Company* case, *supra*, discussed that pressure, recounting the various actions of the Tejon Ranch that had forced the relocation of tribal members. The number of tribal members in residence at the Tejon Ranch was reduced from about 300 to 80 by 1920, a figure corroborated in the 1915 Terrell report. By the time of the 1945 Rockwell report, the tribal members in residence on the Tejon Ranch were reduced to between ten and twelve families.

In 1952, a serious earthquake destroyed the homes of the Tejon families still living on Tejon Ranch. The earthquake resulted in an additional forced shift in tribal membership away from Tejon Ranch towards Bakersfield, where other tribal members had settled earlier. Only three families were able to continue living at the Tejon Ranch after the earthquake, and most of these tribal members eventually also were forced to leave to provide for their families. One of the last to leave was the family of Chief Vincente Montes, which left the Tejon Ranch upon the death of Chief Montes in 1965. The Tejon Indian Tribe's current Chair, Kathryn Montes Morgan, is the daughter of Chief Montes; she was eight years old when her family left Tejon Ranch. (However, even after the Montes family was forced to leave Tejon Ranch, a few other tribal members continued to reside on and work for the Ranch, even today. Hence, there have been Tejon tribal members living at what is now known as Tejon Ranch since time immemorial.)

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[22] Based on interviews of tribal elders conducted by Dr. John R. Johnson, foremost expert on the Tejon Indian Tribe's history. *See* **Exhibit 68** regarding Dr. Johnson's expert qualifications.

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The shift in the majority of members' residence from the Tejon Ranch to nearby Bakersfield and the surrounding area did not alter relations among the Tejon tribal members or the United States' obligation to them. Indeed, the United States implicitly acknowledged its continued guardianship over the Tribe even after the residential shift to Bakersfield in its 1920 bill of complaint, wherein the Department of Justice explicitly discussed this forced relocation by the Tejon Ranch. In its prayer for relief, the Department of Justice sought a decree that "said Tejon Indians, including all living members of said band heretofore driven or forced from said premises by defendants or their predecessors, and the descendants of any and all said Indians . . ." have the right to continue their occupancy of the Tejon Ranch. *See* **Exhibit 71.** And, as discussed above, the Bureau explicitly included Tejon on its list of federally recognized tribes in 1929.

Immediately after the 1952 earthquake, consistent with its role as trustee, Interior made inquiries regarding the welfare of the Tribe and attempted to coordinate relief to tribal members, with the Commissioner of Indian Affairs inquiring specifically about the "welfare of the Indian community, located on the El Tejon Ranch in Kern County." *See* **Exhibits 39, 40.**[23] Unfortunately, however, despite the Bureau's concerns, it determined that it could not assist the Tribe "at this time" with the rebuilding of the Tejon tribal homes on the Ranch. *See* **Exhibit 41,** August 19, 1952 Letter from Sacramento Area Office to Celestina Garcia Montes.

That the Bureau continued to acknowledge its role as trustee is also evidenced by a letter it wrote a year later to a private citizen who had inquired about the possibility of providing electricity to tribal homes on Tejon Ranch, and had offered to pay for the power used. The Area Director explained that, "*the Indian Bureau has been concerned over the welfare of these Indians for many years. . . .*" (Emphasis added.) *See* June 3, 1953 Letter from Area Director Leonard M. Hill to Paul E. Herzog **(Exhibit 42).** Unfortunately, the Bureau again found that it was unable to assist the Tribe because "the land occupied by these Indians is privately owned, the government has no jurisdiction over the property and government funds appropriated to Indian Service cannot be used for improving the facilities of these Indians." *Id.*

Of course the 1950s ushered in the "termination era," during which both Interior and Congress began to turn towards a policy of terminating the federal relationship with Indian tribes. In 1958, Congress enacted legislation providing a termination process for 41 specifically identified California tribes. Act of Aug. 18, 1958, Pub. L. No. 85-671 (72 Stat. 619) **(Tab I).** The Tejon Indian Tribe was not one of the 41 tribes so identified. According to the 1958 Act's legislative history, the termination process was intended to be "voluntary." *See* S. Rep. No. 1874, at 2 (1958) **(Tab J).** Underscoring the voluntary nature of the Act, the Senate Committee Report explained that the legislation listed those tribes that adopted resolutions requesting termination. *Id.*[24] In 1964, Congress amended this legislation to make the termination process available to all tribes in California. Act of Aug. 11, 1964, Pub. L. No. 88-419 (78 Stat. 390) **(Tab K).** The Tejon Indian Tribe never chose to participate in the termination program set up through the 1964 legislation. Had either Interior or Congress sought to terminate the federal relationship with the Tejon Indian

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[23] **Exhibit 39** is an August 13, 1952 Letter from Area Director Leonard Hill to Commissioner, Bureau of Indian Affairs; **Exhibit 40** is an undated memo to the Commissioner regarding the earthquake at Tejon.

[24] Further underscoring the consensual intent of the process, section 2(b) of the Act required approval of any distribution plan through referendum by a majority of the adult Indians who would participate in distribution of the property.

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Tribe, such termination could have been effectuated through the 1958 or 1964 termination processes. There are no records to suggest that the federal government sought or encouraged such termination for Tejon.

That Interior did not view the Tejon Indian Tribe as terminated is reflected in a 1962 Public Lands Order by which the 880 acres of public domain land that had been set aside for the Tribe in 1916 was returned to the public domain. An internal investigation by the Bureau's Sacramento Area Office concluded that the 880 withdrawn acres were of poor quality, without water, and of no economic use to the Tribe. *See* September 29, 1961 Letter from Area Director Leonard Hill to Commissioner, Bureau of Indian Affairs (**Exhibit 43**). As a result, the Commissioner of Indian Affairs recommended that the Bureau of Land Management revoke the Withdrawal Order of November 18, 1916. Interior did so by issuing a Public Lands Order which set forth, inter alia:

> The departmental order of November 9, 1916, temporarily reserving and setting aside the following described lands for use of the El Tejon Band of Indians, is hereby revoked. . . .
>
> The lands which have never been used and are not needed by the Indians for any purpose, are in scattered tracts about 14 to 16 miles southwest of the town of Tehachapi. *They are accessible only by foot, and are steep and rough in topography.*

See Public Land Order 2738 dated July 27, 1962, 27 Fed. Reg. 7636 (Aug. 2, 1962) (emphasis added). Attached at **Exhibit 44**.

In neither the underlying reports nor in the actual Public Lands Order itself is there even a suggestion that federal guardianship over the Tribe had been terminated, had lapsed, or otherwise was no longer in effect notwithstanding the Department's contemporaneous deliberations on the termination of California tribes. Indeed, the language of the Public Lands Order is similar to other orders by which Interior restored land to the public domain that had been withdrawn for *other federally acknowledged tribes*. *See* Order dated March 22, 1956, 21 Fed. Reg. 1940 (March 29, 1956) (revoking temporary withdrawal for Navajo Nation); Public Land Order 4157 dated Feb. 13, 1967, 32 Fed. Reg. 3020-21 (Feb. 17, 1967) (restoring lands in New Mexico withdrawn for Indian use); Public Land Order 4206 dated April 24, 1967, 32 Fed. Reg. 6642 (April 29, 1967) (restoring lands in New Mexico withdrawn for Indian use). The above Public Land Orders are included with **Exhibit 44**.

By stark contrast, the Public Land Order concerning the 880 acres includes none of the language associated with the termination of tribes or the disposal of the property of terminated tribes. Indeed, when Interior intended to terminate the federal relationship with a tribe, it did so expressly:

- "On and after August 13, 1956 the tribes, bands, groups, or communities of Indians located west of the Cascade Mountains in Oregon, including the [listed tribes] and the individual members thereof, *shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians*." Proclamation of Termination of federal Supervision over Property of Western Oregon Tribes and Bands of Indians

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of Oregon, and the Individuals Thereof, 21 Fed. Reg. 6244 (Aug. 18, 1956) (emphasis added);

- "Notice is hereby given that the Indians named under the Rancherias listed below are *no longer entitled to any of the services performed by the United States for Indians because of their status as Indians and all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them*[.]" Termination of Federal Supervision over Property of California Rancherias and Individual Members of Strawberry Valley, Cache Creek, Buena Vista, Ruffeye, Mark West and Table Bluff Rancherias, 26 Fed. Reg. 3073 (April 11, 1961) (emphasis added);

- "Notice is hereby given that the Indians named in the Redding Rancheria distribution plan . . . are no longer entitled to any of the services performed by the United States for Indians because of their status as Indians, and all statutes of the United States which affect Indians because of their status as Indians sshall be inapplicable to them[.]" Property of the California Rancherias and of the Individual Members Thereof, Termination of Federal Supervision, 27 Fed. Reg. 5840-41 (June 20, 1962);

- "Pursuant to the provisions of [federal law] it is hereby proclaimed that . . . the Federal trust relationship to the Ponca Tribe . . . and its individual members is terminated. Hereafter, the tribe and the individual members . . . shall not be entitled to any of the special services performed by the United States for Indians or Indian tribes because of their status as Indians; all statutes of the United States which affect Indians or Indian tribes because of their status as Indians shall be no longer applicable to the tribe or its members[.]" Notice of Termination of Federal Trust Relationship and Supervision over affairs of individual members of the Ponca Tribe, 31 Fed. Reg. 13810 (Oct. 27, 1966).

The above examples (attached at **Exhibit 44**) are Interior proclamations issued contemporaneously with the Tejon Public Land Order. Indeed, the notice of termination for Strawberry Valley, Cache Creek, Buena Vista, Ruffeye, Mark West and Table Bluff was issued more than a year prior to the Tejon Public Land Order and the Redding Rancheria termination notice predated the Tejon Order by a few weeks. The Tejon Public Land Order used vastly different language and clearly was not designed to terminate the federal relationship with the Tejon Indian Tribe.

1962 to 2006

During the first half of this time period the Bureau of Indian Affairs radically curtailed federal services to California tribes. Indeed, the Senate Report accompanying the 1958 termination legislation specifically acknowledged that "*no federal programs are planned for the benefit of California Indians.*" S. Rep. No. 1874 (1958) at 4, (emphasis added) (**Tab J**).

Like other recognized California tribes, Tejon (which did not have trust land) did not receive extensive federal services during this time period. Instructive are the Bureau's own descriptions of the services it was (not) providing to the tribes that had opted for the termination process:

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- Auburn Rancheria (United Auburn Indian Community of the Auburn Ranchria of California[25]): "*Bureau Services.* -- The Bureau renders virtually no regular services to the group. Its responsibility is primarily with the 40 acres of land being held in trust status. Adequate roads have been built in the past and have been turned over to the county for administration. There is a Johnson O'Malley educational contract with the State of California and the Auburn School District receives funds through this contract because of the Indian children in the public school."[26]

- Big Sandy Rancheria (Big Sandy Rancheria of Mono Indians of California): "*Bureau Services.* – The only service rendered by the Bureau is in connection with the trust status of the 280 acres. The children of school age attend public school in Auberry, which is about 2 miles from the rancheria. The local school district does not receive additional funds under the Johnson O'Malley Act between the Bureau and the State of California[.]"[27]

- Blue Lake Rancheria (Blue Lake Rancheria, California): "*Bureau Services.* – The only service that the Bureau renders the group is in connection with the trust status of the 26 acres of land. There is a Johnson O'Malley educational contract with the State of California, and the Blue Lake School District receives funds under this contract because of the Indian children attending its public school[.]"[28]

- Buena Vista Rancheria (Buena Vista Rancheria of Me-Wuk Indians of California): "*Bureau Services.* – Bureau services are rendered only in connection with trust status of the lands."[29]

- Chicken Ranch Rancheria (Chicken Ranch Rancheria of Me-Wuk Indians of California): "*Bureau services.* – Bureau services are rendered only in connection with the trust status of the land."[30]

- Chico Rancheria (Mechoopda Indian Tribe of Chico Rancheria, California): "*Sources of Income.* -- . . .[T]hey have never received any social services from the Bureau of Indian Affairs because of their status as Indians. *Bureau services.* – The Bureau renders services only in connection with the trust status of the land[.]"[31]

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[25] Names in parentheses are the names of the respective tribe as shown in the 2005 list of Indian entities recognized and eligible to receive services from the United States Bureau of Indian Affairs. 70 Fed. Reg. 71194 (Nov. 25, 2005).

[26] S. Rep. No. 1874, at 13 (1958).

[27] *Id.* at 14.

[28] *Id.* at 16.

[29] *Id.* at 17.

[30] *Id.* at 19.

[31] *Id.* at 20.

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- Cloverdale Rancheria (Cloverdale Rancheria of Pomo Indians of California): "*Bureau services.* -- [T]he Bureau performs other services necessary because the land is in trust, but provides no direct service to the people living there. They receive social services from the county and State on the same basis as other citizens."[32]

- Cold Springs Rancheria (Cold Springs Rancheria of Mono Indians of California): "*Bureau services.* -- Services extended by the Bureau are limited to the trust status of the land; no social services are performed by the Bureau for the people living there. . . . All the children attend public school."[33]

- Elk Valley Rancheria (Elk Valley Rancheria, California): "*Bureau services.* – Services are extended by the Bureau because of the trust status of the land; no social services are performed by the Bureau for the people living on the rancheria. Del Norte County receives payments under the Johnson-O'Malley educational contract because Indian pupils are attending its public schools. The county furnishes bus service[.]"[34]

- Graton Rancheria (Federated Indians of Graton Rancheria, California): "*Bureau services.* – The Bureau renders no services to the group as people; it is only responsible for the trust status of the land."[35]

- Greenville Rancheria (Greenville Rancheria of Maidu Indians of California): "*People.* – [T]hese people have been independent of direct Bureau services for years, and are accepted as members of the extended community."[36]

- Hopland Rancheria (Hopland Band of Pomo Indians of the Hopland Rancheria, California): "*Bureau services.* – The principal service performed by the Bureau is in connection with the trust status of the land. . . . The school district in the town of Hopland receives payments under the Johnson-O'Malley educational contract for the Indian children attending their public schools. The Bureau extends no social services to the group."[37]

- Lytton Rancheria (Lytton Rancheria of California): "*Bureau services.* – The Bureau renders services because of the trust status of the land. There are no social services rendered by the Bureau because these people are Indians. The local school district

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[32] *Id.* at 21.

[33] *Id.* at 22.

[34] *Id.* at 23

[35] *Id.* at 25.

[36] *Id.*

[37] *Id.* at 27.

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receives funds under the Johnson-O'Malley educational contract because of the Indian children attending their public schools[.]"[38]

- Middletown Rancheria (Middletown Rancheria of Pomo Indians): "*Bureau services.* – . . . It does not provide any social services for these Indians. They receive these services from the county. The school district at Middletown receives payments under the Johnson-O'Malley Act because Indian children are attending their public schools."[39]

- Potter Valley Rancheria (Potter Valley Tribe, California): "*Bureau services.* – The Bureau renders services only because of the trust status of the land; all other services are provided to the people by the county. . . . The local school district receives payments under the Johnson-O'Malley educational contract for the two children who attend public school."[40]

- Quartz Valley Rancheria (Quartz Valley Indian Community of the Quartz Valley Reservation of California): "*Bureau services.* – Services extended by the Bureau are limited to the trust status of the land; no social services are performed by the Bureau for the people living on the rancheria. The children are attending public school. Health and welfare needs of the Indians are met by local offices on the same basis as these services are extended to non-Indians."[41]

- Redding Rancheria (Redding Rancheria, California): "*Bureau services.* – The Bureau performs services because the land is in trust status. It renders no services to these people because they are Indians except that the local school district receives money under the Johnson-O'Malley contract."[42]

- Redwood Valley Rancheria (Redwood Valley Rancheria of Pomo Indians of California). "*Bureau services.* – Services are rendered by the Bureau only because of the trust status of the land."[43]

- Robinson Rancheria (Robinson Rancheria of Pomo Indians of California): "*Bureau services.* – The Bureau renders no services to this group because of their status as Indians. Realty services are extended because of the trust status of the land."[44]

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[38] *Id.* at 29.

[39] *Id.* at 30.

[40] *Id.* at 36.

[41] *Id.* at 37.

[42] *Id.* at 38.

[43] *Id.* at 39.

[44] *Id.* at 40.

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- Rohnerville Rancheria (Bear River Band of the Rohnerville Rancheria, California): "*Sources of income.* – [T]hey receive welfare aid from the county with no distinction being made because they are Indians. *Bureau services.* – The Bureau renders services only because the land is in a trust status[.]"[45]

- Scotts Valley Rancheria (Scotts Valley Band of Pomo Indians of California): "*Bureau services* – In the past 5 years, the Bureau spent $3,500 for building roads and $3,861.08 to rehabilitate the water system. Expenditures were made because of the trust status of the land. The Bureau does not render social services to these people, but the local school district receives payments under the Johnson-O'Malley education contract."[46]

- Smith River Rancheria (Smith River Rancheria, California): "*Bureau services.* – Services rendered by the Bureau are limited to the trust status of the land; no social services are performed by the Bureau for the people living on the rancheria. The children all attend public school. Health and welfare needs of the Indians are met by local offices on the same basis as these services are extended to non-Indians."[47]

- Table Bluff Rancheria (Wiyot Tribe, California): "*Bureau services.* – The Bureau renders no services to these people except in connection with the trust status of the land. . . . The local school district receives payments under the Johnson-O'Malley contract because of the Indian children who attend their public schools."[48]

- Table Mountain Rancheria (Table Mountain Rancheria of California): "*Bureau services.* – [The Bureau renders no services to these people because they are Indians. They receive social welfare services from the county and the State[.]"[49]

Despite the Bureau's extreme curtailing of services to California tribes during this period, in the decades following the return of Tejon lands to the public domain, Tejon members continued to receive some BIA services. As mentioned earlier, in the early 1970s Juanita Montes' son, Leonard Montes (who is now deceased), received BIA funding for vocational training; in the late 1970s, Donna Montes attended Business School with the aid of BIA funding; and in the 1980s, Virginia Montes received BIA support for vocational training.[50]

Also of note, in the late 1960s and late 1970s, the Tejon Indian Tribe was the subject of Congressional inquiries. Interior's responses set forth a brief historical overview of the Tribe,

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[45] *Id.* at 41.

[46] *Id.* at 43.

[47] *Id.* at 44.

[48] *Id.* at 46.

[49] *Id.* at 47.

[50] Based on interviews of tribal elders conducted by Dr. John R. Johnson. *See* Exhibit 68 regarding Dr. Johnson's expert qualifications.

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explained that the United States pursued litigation on behalf of the Tribe to the Supreme Court and that the Tribe was permitted by the Ranch to remain on its aboriginal lands after the litigation. *See* Interior's correspondence to Congress at **Exhibit 45**. In this correspondence Interior never in any manner suggested that federal guardianship over the Tribe had been terminated, had lapsed, or otherwise was no longer in effect.

Finally, we note that the vast majority of the documents on which the Tribe's Request for Confirmation of Status relies were obtained from the National Archives and other federal sources. Unfortunately, the National Archives does not maintain files about tribes beyond 1970. *See* www.archives.gov/research/native-americans/index.html. For this reason, it has been more difficult to reconstruct the documentary record of the Bureau's relationship with the Tribe during the last two or three decades of the twentieth century. Nevertheless, the Tribe is continuing its search for copies of federal documents from this time period.

2006
The Tejon Indian Tribe Today

The Tejon Indian Tribe's present day membership descends directly from the documented membership of the historic "El Tejon Band." BIA's 1915 census of Tejon tribal members (the Terrell Report discussed herein at pp. 13) listed 81 tribal members. All of the tribal members appearing on the 1915 BIA/Terrell census were closely related and lived together in an all-Tejon settlement. *See* Genealogical Relationships within the Tejon Band in 1915, prepared by John R. Johnson, Ph.D., Santa Barbara Museum of Natural History John R. Johnson (**Exhibit 68**); Table 1: Genealogical and Life History Data for Tejon Indian Tribe Members Listed on the 1915 Census Reported by Special Agent John J. Terrell, prepared by John R. Johnson, Ph.D., Santa Barbara Museum of Natural History (**Exhibit 68**). A significant majority of those on the 1915 BIA list for whom we know their burial location are now buried in the Tejon Indian cemetery. *See* Column I, Table 1: Genealogical and Life History Data for Tejon Indian Tribe Members Listed on the 1915 Census Reported by Special Agent John J. Terrell (**Exhibit 68**); Death Certificates collected at **Exhibit 67**. This cemetery is located on the Tejon Ranch and in the heart of the Tejon Indian village. Today, all members of the modern Tejon Indian Tribe easily trace their ancestry back to tribal members identified on the 1915 BIA/Terrell census. As shown in Tables 1 and 2, the vast majority of those few members who do not have descendants in Tejon today either died without children or separated from the Tribe.[51] In fact, all modern day members have at least two ancestors on the Terrell list and some have as many as ten ancestors on the Terrell list. *See* **Exhibit 68 (Table 3)**.

The 1915 BIA/Terrell census is corroborated by the 1933 California Indian Roll listing Tejon Indians. The California Indian Roll lists 46 full bloods, which constituted 62% of those listed; all the rest, save three individuals, were one-half blood or more. Since descent from the California Indian Roll is a membership requirement, all modern day Tejon members have ancestors on the Roll. Because Tejon tribal members were historically and are today closely related, there is a close correlation between those listed in 1933 and the modern day members. As a result, the overwhelming majority of those listed in 1933 who married and left issue have descendants on the

[51] The analysis contained herein was done by Dr. John Johnson, who has spent his career studying the Tejon Indian Tribe. *See* Brief Biography of John R. Johnson (**Exhibit 68**) His analysis of the Terrell census and its relation to the 1933 California roll listing Tejon Indians is set out in **Exhibit 68**, attached.

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modern roll. *See* Table 2: Tejon Indian Tribe Members Listed on the 1933 California Indian Roll with Information about their marriages, Descendants, and Attendance at Sherman Indian School (**Exhibit 68**).

The present day Tejon members not only all descend from historic tribal members, but they also exhibit multiple, lateral kinship ties. This is a result of the historically high in marriage rate. To exemplify this phenomenon, the relationship of Chair Morgan to the current enrolled members is shown in category F of Table 3: Genealogical and Life History Information Regarding Current Members of the Tejon Indian Tribe (**Exhibit 68**). The Chair is related to every single member of the Tribe and the most distant relation is that of the seventh degree, or second cousin, once removed. She is also the great-great granddaughter of Chico, who signed the 1851 treaty on behalf of the Tribe. This high level of inter-relationship is typical of Tejon members. As one would expect with a closely related community, the modern day members also reside in close proximity to each other. As is demonstrated in the map below and by the address list provided at **Exhibit 69,** 55% of the current membership resides within approximately 30 miles of Bakersfield.[52]

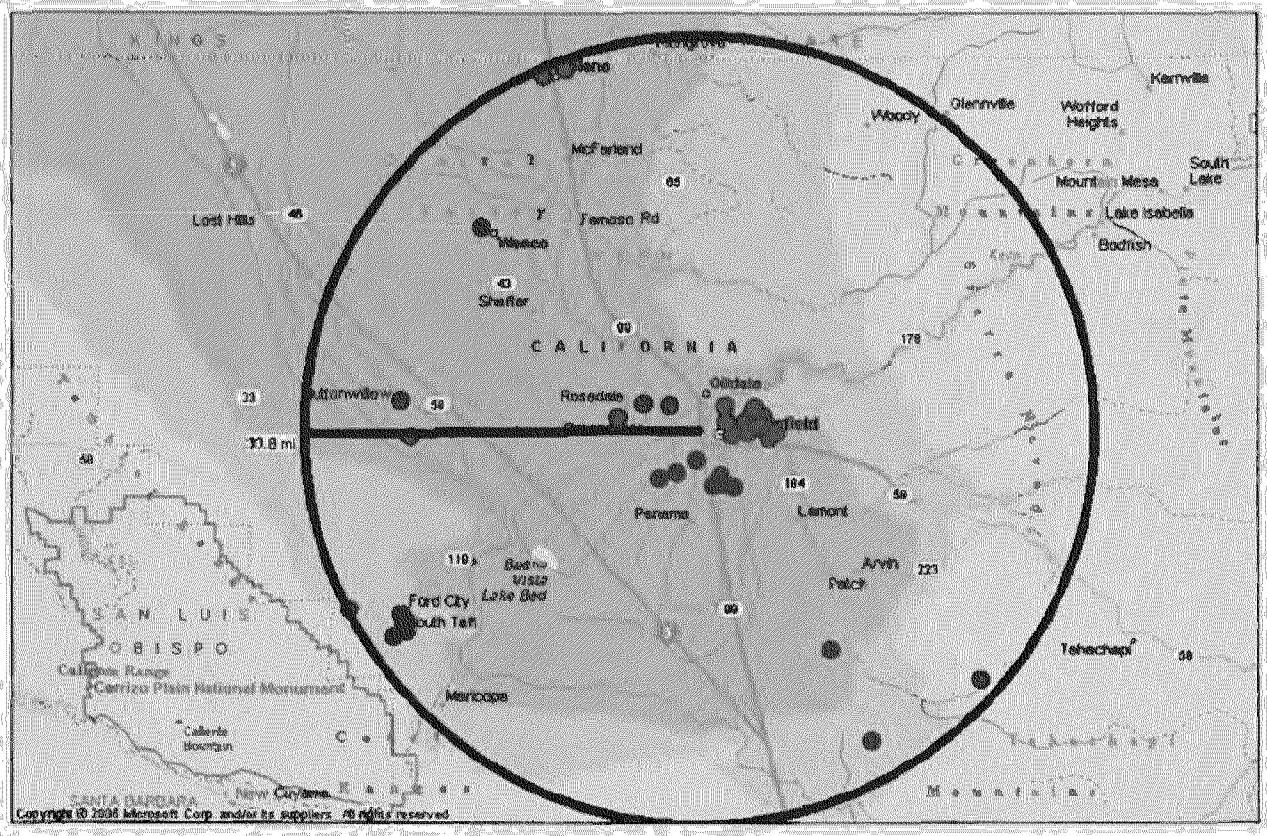

FIG. 8: MAP SHOWING TEJON RESIDENCES WITHIN 30 MILES OF BAKERSFIELD

[52] Because of these close relationships among the present day members, social interaction among them obviously takes place and is evidence of community. Further, the persistence of a named, collective Indian identity consistently acknowledged by DOI as the Tejon Band or Tribe of Indians is evidence of community. §§ 83.7(b)(ii), (viii).

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The profile of the Tejon Indian Tribe is truly remarkable. Not only has Interior historically and into modern times acknowledged the Tribe, but a substantial number of the tribal elders still alive today were alive during many of the Interior's actions evidencing acknowledgment in the twentieth century. Of the current membership, a full **25%** of Tejon tribal members alive today were alive in 1962 when Interior issued the Public Land Order and federal register notice concerning the Tribe's lands. Of the current living membership, over **20%** were either born on or resided on the Tejon Ranch at some point in their lives. And over the years, presently living tribal members were educated at the Tejon Indian school and/or enrolled at BIA boarding schools. Following is a photograph of tribal elder [redacted] taken last month in front of the Tejon Indian School he attended as a boy. (He also attended BIA's Sherman Institute.)

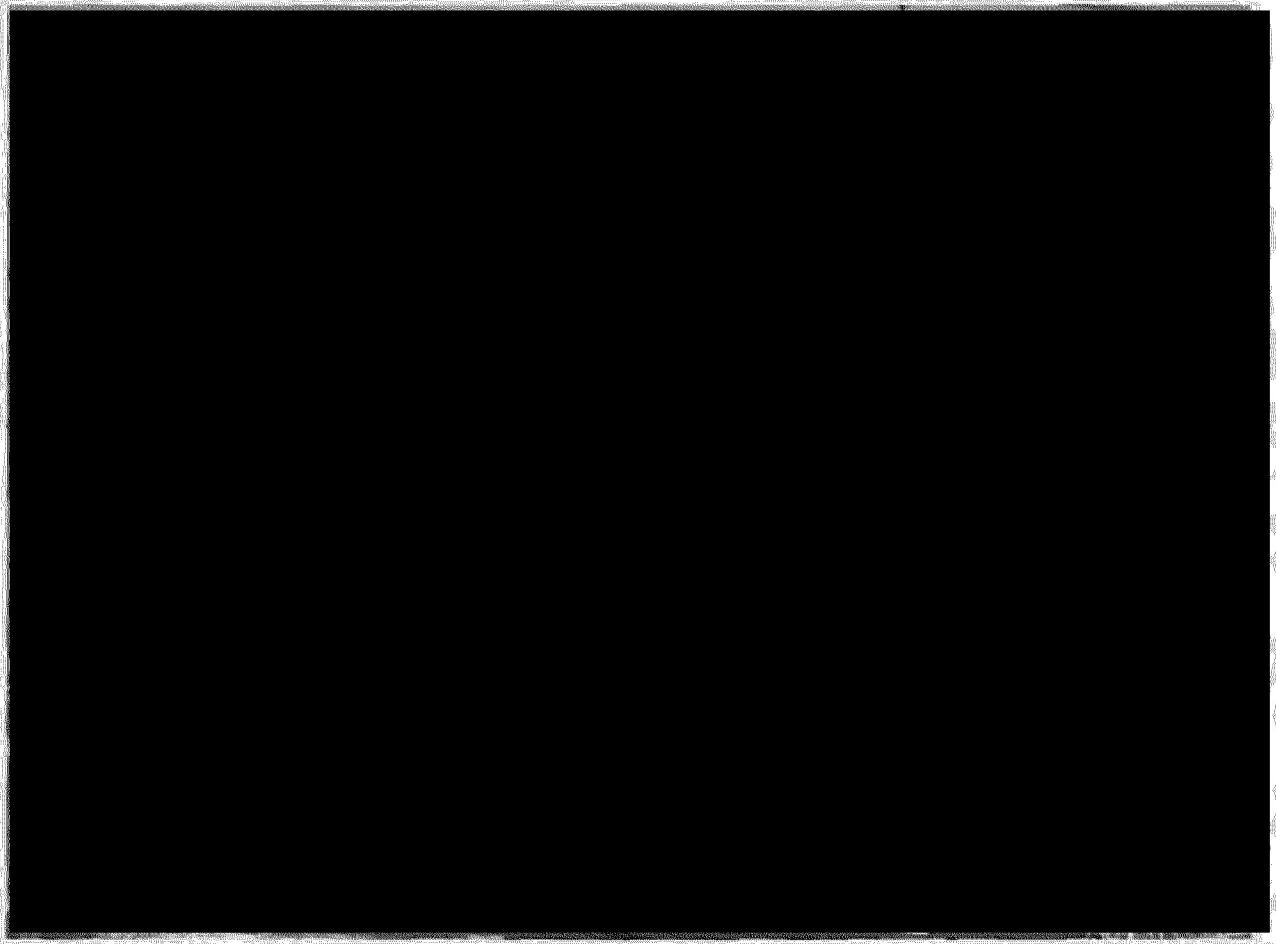

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FIG. 9: PHOTO OF [redacted]

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FIG. 10: PHOTO OF THE TEJON SCHOOL, 2006

This is not only the same Tribe acknowledged by Interior through the twentieth century, but literally these are many of the same individual tribal members who personally benefited from the federal government's guardianship. This fact is graphically reflected in the photograph below taken by John Harrington in 1933. Three of the members in this photograph are today living tribal elders [redacted], and two of these [redacted] appear in the following photograph taken in May of this year at the Tejon Indian Tribe's annual gathering.

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FIG. 11: 1933 [redacted] FAMILY PHOTOGRAPH

[redacted]

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FIG. 12: THIS PHOTOGRAPH WAS TAKEN IN 2006 AT THE TRIBE'S ANNUAL MEETING ON TEJON RANCH. ON THE LEFT IS [redacted]

In sum, the Tejon Indian Tribe remains the highly inter-related Indian community that it has been historically. The present members all descend from the historic Tejon Indian Tribe, with multiple kinship ties demonstrating intense relations among the members, and a majority reside in close proximity to their historic territory at Tejon. In addition, the Tribe's present leadership descends politically and genealogically from its historic leadership. Hence the present day Tribe is the same Tribe that has been historically and continuously acknowledged by Interior since 1851.[53] *United States v. Title Insurance and Trust Co.*, 265 U.S. 472 (1924); 27 Fed. Reg. 7636 (1962).

[53] As noted below, the Tejon Indian Tribe falls outside the scope of Interior's Procedures For Establishing That An American Indian Group Exists As An Indian Tribe, 25 C.F.R. Part 83. *See* discussion at pp. 41-42. Were those regulations applicable, the Tribe would plainly qualify for acknowledgment under the under the previous federal acknowledgment provisions of those regulations with the 1962 Public Land Order as recent evidence of such acknowledgment. See 25 C.F.R. §83.8(c)(3): "Evidence that the group has been treated by the Federal Government as having collective rights in tribal lands or funds" constitutes previous federal acknowledgment. As a result, were the regulations applicable, the Tribe would only be obliged to demonstrate descent from the previously acknowledged group, contemporary community, and contemporary political leadership. §83.8(d). The profile of the modern day tribe set out above plainly fulfills these requirements.

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PART II

INTERIOR MUST CONFIRM THE TRIBE'S STATUS AS A FEDERALLY-ACKNOWLEDGED TRIBE

ACKNOWLEDGEMENT OF THE TRIBE HAS BEEN CLEARLY ESTABLISHED

As demonstrated in the narrative above and by the original source documents attached as Exhibits to this Request, the Department of the Interior historically and continuously has acknowledged the Tejon Indian Tribe for more than a century and a half. Over the course of time:

- The federal government sent Indian agents to negotiate a land cession treaty with the Tribe;
- The Bureau of Indian Affairs set up, and for more than a decade managed, a military reservation located within the Tribe's traditional territory for the Tribe's use and benefit;
- After the Tribe's traditional territory was sold into private ownership, Interior negotiated (on multiple occasions over the course of many decades) with the private owners of the Tribe's to try to obtain reservation lands for the Tribe there;
- Interior monitored the welfare of and provided protection to tribal members living at the Tejon Ranch;
- Interior and the Department of Justice instituted litigation as federal trustees to try to protect the Tribe's traditional lands;
- The Supreme Court accepted the United States' assertion of that federal trust relationship;
- Interior provided educational funding and oversight to Tejon children;
- Interior used federal funds to provide for the general welfare of the Tribe;
- Interior set aside lands from the public domain for the sole use and occupancy of the Tribe;
- Interior included the Tejon Indian Tribe in official census rolls; and
- Interior included the Tejon Indian Tribe on list of Indian Tribes of the United States.

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Significantly, Interior's acknowledgement of the Tribe was explicitly authorized by Congress. The establishment of the Tejon (Sebastian) Military Reservation in the 1850s was done pursuant to direction from Congress. *See* 10 Stat. 238 (1853) (**Tab F**). Similarly, the United States' effort to regain for the Tribe some of its lost aboriginal territory through the instigation of the 1920 lawsuit was premised on Congress' direction to the Attorney General, at the request of the Secretary, to protect tribal rights to land. *See* Act of January 12, 1891, 26 Stat. 712 (**Tab G**). That Act specifically required the Secretary to establish reservations for mission Indians in California to encompass, as far as practicable, "the lands and villages which have been in the actual occupation and possession of said Indians. . . ." *Id.*, § 2. Congress further imposed upon the United States Department of Justice the duty to defend tribal rights to lands:

> [I]n cases where the lands occupied by any band or village of Indians are wholly or in part within the limits of any confirmed private grant or grants, it shall be the duty of the Attorney General of the United States, upon request of the Secretary of the Interior, through special counsel or otherwise, to defend such Indians in the rights secured to them in the original grants from the Mexican Government . . . or to bring any suit, in the name of the United States . . . that may be found necessary to the full protection of the legal or equitable rights of any Indian or tribe of Indians in any such lands.

Id. at § 6. In the litigation before the Supreme Court, the United States expressly asserted that it was acting as guardian for the Tribe and that the litigation had been authorized by Congress through the 1891 Act. Interior has never repudiated that guardian relationship[54] – to the contrary, Interior consistently has acted consistent with its guardianship in multiple ways over the course of a long period of time.[55]

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[54] In this important respect, this case is different from that of the Miami Tribe of Indiana considered in *Miami Nation of Indiana, Inc. v U.S. Dep't of Interior*, 255 F.3d 342 (7th Cir. 2001). There, the Department had formally repudiated its historic acknowledgment of the tribe in an 1897 decision so that the Department was able to inquire into the tribe's continued existence since 1897.

[55] There are two isolated, historical documents that indicated any doubt about Interior's continuing relationship with the Tribe, neither of which was authoritative or final. The first of these was a December 30, 1925, letter from BIA Commissioner Burke to Superintendent Dorrington suggesting that federal appropriations could not be used for the benefit of the Tejon Indian Tribe since the tribal members were non-ward citizens of the state who did not reside on a reservation. *See* **Exhibit 70**. This suggestion was clearly wrong as a matter of law, since the federal trust relationship depends upon the maintenance of tribal relations, not the presence of a reservation or the lack of citizenship. *See* Solicitor's Opinion on Applicability of the Social Security Act to the Indians (April 22, 1936) (**Tab W**); *United States v Nice*, 241 U.S. 591 (1916) (**Tab L**); *Perrin v United States*, 232 U.S. 478 (1914). The Commissioner obviously reconsidered this position, since the very next year he authorized the expenditure of Indian education funds for the Tribe and four years later included the Tribe in a list of recognized tribes. The second of these documents is a letter dated October 17, 1945, in which the Sacramento Superintendent indicated that, the Government having lost the land claim on behalf of the Tribe, the Tribe could not be considered wards of the Government justifying the expenditure of Indian service funds. *See* **Exhibit 70**. Again, this was wrong as a matter of law, by the same authority cited above. And, again, it was not the considered view of the Department since the Department that very year and later expended Indian education funds on Tejon members. Further, both documents are wrong as a matter of fact because at the time the Tribe did have a federally reserved land base until 1962 when the Department issued the Public Land Order regarding the lands reserved for the El Tejon Band of Indians.

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THE TEJON INDIAN TRIBE HAS NEVER BEEN TERMINATED

It is well established that it is for Congress and Congress alone to decide if and when to terminate the United States' relationship with a particular tribe. As early as 1916, the Supreme Court observed:

> Of course, when the Indians are prepared to exercise the privileges and bear the burdens of one sui juris, the tribal relation may be dissolved and the national guardianship brought to an end; *but it rests with Congress to determine when and how this shall be done*, and whether the emancipation shall at first be complete or only partial.

United States v Nice, supra at 598 (emphasis added) (**Tab L**). *See* also *Chippewa Indians v United States*, 307 U.S. 1, 5 (1939) (Court may not assume that Congress abandoned guardianship absent clear expression of that intent) (**Tab M**); *Tiger v Western Investment Co.*, 221 U.S. 286, 315 (1911) ("[C]ongress in pursuance of the long-established policy of the government, has a right to determine for itself when the guardianship which has been maintained over the Indian shall cease. It is for that body, and not the courts, to determine when the true interests of the Indian require his release from such condition of tutelage.") (**Tab N**). Hence, federal common law dictates that the United States owes a continuing duty to the Tejon Indian Tribe until and unless such time as Congress determines otherwise.

The federal common law rule that only Congress has authority to terminate a tribe was adopted by Congress in Pub. L. 103-454, portions of which amended the Indian Reorganization Act in 1994. In Pub. L. 103-454 Congress decreed that in the modern era tribes that have been (i) recognized by an act of Congress, (ii) recognized by Interior under its administrative acknowledgment regulations, and (iii) recognized by the decisions of U.S. courts cannot be terminated without express congressional action. Pub. L. 103-454 (§ 103(4)) (**Tab O**). Thus, in addition to being protected by federal common law, the Tejon Indian Tribe's federally-acknowledged status also is protected under this statutory rule by virtue of the Supreme Court's decision in *United States v Title Insurance & Trust Co.*, *supra*, in which the Supreme Court accepted the United States' assertion of its trust relationship with the Tejon Indian Tribe.

Both the judge-made and statutory rules, then, require an Act of Congress to terminate the United States' acknowledged relationship with the Tejon Indian Tribe. Because Congress authorized the relationship, Interior established and has not repudiated the relationship, the Supreme Court has acknowledged the relationship, and Congress has not terminated the relationship. Interior is obliged now to confirm that relationship.

THE TEJON INDIAN TRIBE MUST BE ADDED TO THE CURRENT LIST OF FEDERALLY ACKNOWLEDGED TRIBES

Because the federal government's longstanding acknowledgement of the Tribe is so clear, and because Congress has never terminated the United States' relationship with or obligations to the Tribe, the Secretary must confirm the Tribe's acknowledged status by including it on the List of Federally Recognized and Acknowledged Tribes. Interior has no alternative, in that it cannot subject the Tejon Indian Tribe to the administrative Federal Acknowledgment Process since the Tribe, already acknowledged by Interior, falls outside the scope of those regulations. *See* 25 C.F.R. §

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83.3(a): "This part applies only to those American Indian groups indigenous to the continental United States *which are not currently acknowledged as Indian tribes by the Department" (emphasis added)* (**Tab P**). Neither can Interior refuse to place the Tribe on its list of federally acknowledged tribes, since to do so would effectively terminate the Tribe in contravention of federal common and statutory law.

Interior, of course, maintains authority to confirm the federal acknowledgment of Indian tribes. 25 U.S.C. § 2 (**Tab P**).[56] Within the past twelve years, the Department has exercised that authority to confirm the status of four tribes -- the Ione Band of Miwok, the Lower Lake Rancheria, the King Salmon Tribe and the Shoonaq' Tribe of Kodiak. *See* 60 Fed. Reg. 9250 (1995) (confirming Ione Band of Miwok); 67 Fed. Reg. 46328 (2002) (confirming Lower Lake Rancheria, the King Salmon Tribe and the Shoonaq' Tribe of Kodiak) (**Tab Q**). A common thread among Tejon and these tribes is that the Departmental action confirmed a continuing relationship, rather than restored recognition to a tribe that had been terminated.

The examples cited above are the most recent confirmation actions taken by the Department, but they are not the only affirmations of status done separately from the Federal Acknowledgement Process (FAP) (25 C.F.R. Part 83). Shortly after establishing the FAP in August 1978, the Department "substantiated" the "continued existence" of the Karuk Tribe as a federally acknowledged Tribe based on findings made by the Central Office during a field trip in November of 1978. In January 1979 Acting Assistant Secretary Rick Lavis wrote:

> Based on the findings collected by a member of the Bureau's Central Office . . . during a field last November, the continued existence of the Karoks as a federally recognized tribe of Indians has been substantiated. In light of this finding, I am hereby directing that the government-to-government relationship, with attendant Bureau services within available resources, be re-established. Accordingly, I am further directing that the tribe be added to all lists of federally recognized tribes maintained by the Bureau of Indian Affairs.

January 15, 1979 Memorandum from the Assistant Secretary for Indian Affiars to the Sacramento Area Director. (**Tab V**).

There is no explanation in Interior's records for why the Tejon Indian Tribe has not already been included. Interior began its initial preparation of its first list of recognized tribes in 1966, just four years after Interior had issued its (non-termination) order restoring land set aside for the Tejon in 1916 to the public domain. According to BIA staff responsible for the preparation of the list, the central office prepared a preliminary list that was then circulated to area offices for comment. A final list was prepared by central office based on those comments on December 5, 1969. Testimony of Patricia Simmons, before Administrative Law Judge Torbett, Aug. 23, 1994, in *Greene v Babbitt*,

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[56] As explained above, 25 C.F.R. Part 83 does not apply to tribes currently acknowledged. 25 C.F.R. § 83.3(a). Even if Part 83 applied, the Department may waive or make exceptions to any applicable regulation if permitted by law and "such waiver or exception is in the best interest of the Indians." 25 C.F.R. § 1.2 (**Tab P**). Clearly, if such a waiver is necessary here, it is wholly appropriate given that Interior is confirming a relationship not only with the same Tribe but literally the same people alive in 1962 (when the Tribe's lands were restored to the public domain) and their immediate descendents.

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Case No. Indian 93-1 (USDOI Office of Hearings and Appeals). *See* Exhibits P-3, P-4 from *Green v. Babbitt*, attached hereto at **Tab R**. The final list was published for the first time in the Federal Register on January 31, 1979. 44 Fed. Reg. 7235 (1979). The Tejon Indian Tribe does not appear on the published list either.

Ms. Simmons notes in her testimony that virtually no administrative record exists as to how or why individual tribes were added to the original lists in 1966 and 1969. In response to Freedom of Information Act requests, neither the central nor regional office of the BIA was able to locate any record regarding the absence of the Tejon Indian Tribe, in particular, from the draft and final lists of recognized tribes.[57] Whether deemed an oversight, ignorance on the part of staff, or inadequate investigation or research, an error was plainly made when Interior failed to include the Tejon Indian Tribe on the list of federally recognized tribes. One possibility is that the Tribe was overlooked because it no longer had a federally-protected land base. It is well established, however, that lack of a reservation or trust land does not jeopardize a tribe's acknowledgment status. Indeed, Congress, through the Indian Reorganization Act (IRA), authorized the Secretary to take land into trust and establish reservations specifically for landless tribes. *See* 25 U.S.C. §§ 465, 467 **(Tab S)**. The legislative history of the IRA confirms this fact and underscores that its purpose is to establish a land base for landless tribes. As explained by Congressman Howard (who was a sponsor of the legislation):

> Section 5 sets up a land acquisition program to provide land for Indians who have no land or insufficient land, and who can use land beneficially. . . . I have already said that there are more than 100,000 landless Indians in America today . . .. This program would permit the purchase of land for many bands and groups of landless Indians[.]

Cong. Rec. H 11730.

Hence, if this was the reason for the oversight, it is not legally defensible.

ADDITIONALLY, THE INDIAN REORGANIZATION ACT ENTITLES HALF-BLOOD TRIBAL MEMBERS TO BIA SERVICES, AND ENABLES THEM TO ORGANIZE A TRIBAL GOVERNMENT

It should be noted that aside from the Tejon Indian Tribe's right to be included on Interior's list of federally recognized tribes, the Indian Reorganization Act makes clear that "half-blood" members of the Tribe are entitled to BIA services and that the IRA allows them to organize their own tribal government.

There are 37 members of the Tejon Indian Tribe who can prove that they are one-half or more Indian "blood."[58] The blood quantum of these members is easily documented by tracing how

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[57] Copies of the Tribe's Freedom of Information Act requests and the Department's responses are provided at **Exhibit 72.**

[58] It should be noted that there are an additional 39 members who are 7/16 Tejon blood quantum, just barely below one-half.

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they are linked through their parents and grandparents to full-blood Tejon Indians identified on BIA's own 1933 roll of California Indians (which identifies the tribe and blood quantum of all individual Indians listed). *See* Table 2 (listing blood quantum as shown in 1933 Roll) and Table 3 (listing blood quantum of current members) at **Exhibit 68.**

Section 19 of the Indian Reorganization Act of 1934 (IRA) (25 U.S.C. § 479) defines the term "*Indian*" as including "all persons of one-half or more Indian blood." Hence the Tejon members with a half or more Indian quantum are now, and always have been, eligible for BIA and other federal services made available to "Indians" because of their status as Indians. That the Tejon half-blood community is entitled to BIA services is true regardless of whether the Tejon Indian Tribe is deemed to be recognized (*see Maynor v Morton*, 510 F.2d 1254 (D.C. Cir. 1975) (**Tab U**)) and regardless of whether that recognition has or has not lapsed (*see United States v John*, 437 U.S. 634, 650 (1978) (**Tab T**)).

One of the benefits for which half-blood Indians are eligible is that the Secretary is authorized to acquire trust land for Indians under Section 5 of the IRA (25 U.S.C § 465). (We note again the legislative history of Section 5, wherein Congressman Howard explained "Section 5 sets up a land acquisition program for Indians that have no land . . . there are more than 100,000 landless Indians in America today[.]" Cong. Rec. H. 11730. Further, the Secretary is authorized to proclaim such trust lands as a reservation for the half-blood community under Section 7 (25 U.S.C. § 467). This is important because Section 16 of the Indian Reorganization Act (IRA) (25 U.S.C. § 476) entitles "[a]ny *Indian tribe*, or tribes, *residing on the same reservation*" to organize a tribal government. Hence, once the Tejon half blood community is provided with reserved land, it is entitled under Section 16 to organize its own government under the IRA. (Copies of 25 U.S.C. §§ 465, 467, 476, and 479 provided at **Tab S**).

While at first glance this analysis may seem attenuated, in fact the interplay of these provisions of the IRA, and the availability of this process to half-blood Indian communities, has been confirmed by both Cohen's *Federal Indian Law Handbook* and by the Department of the Interior.

In the most recent edition of Cohen's *Handbook*, the authors explain:

> Read together, these [IRA] definitions [of "Indian tribe" and "Indian"] make three classes of 'Indians residing on one reservation' eligible to organize under the IRA: (1) members of any recognized Indian tribe now under federal jurisdiction [footnote omitted]; (2) descendants of members of any such recognized Indian tribe, who resided on any reservation on June 1, 1934; and (3) [p]ersons of one-half or more Indian blood. Individuals fitting these definitions but not residing on a reservation cannot organize under the IRA, but are nevertheless eligible to enjoy some of its provisions. [Footnote to *Maynor v Morton, supra*, omitted.] One provision of the IRA gives the Secretary discretionary authority to accept or purchase land in trust for 'Indians' included within its provisions. [Footnote to *United States v John* omitted.] The Solicitor has held that the Secretary may exercise this authority for all individuals of one-half or more Indian blood. Once these individuals become the beneficiaries of land held in trust they can organize themselves as a government and as a

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'reservation' tribe or band, become eligible for organization under the IRA.

Cohen's, at 152.

Interior embraced the interplay of these provisions of the IRA when in July, 1981, nearly three years after adoption of the Federal Acknowledgement Regulations, the Department approved the Constitution and by-laws of the Jamul Indian Village of California, which organized itself as a half-blood community under the Indian Reorganization Act. The Jamul Band subsequently was added to the list of acknowledged tribes in 1982. *See* 47 Fed. Reg. 53132 (1982) (**Tab V**). The half-blood members of the Tejon Indian Tribe would be entitled to organize under those same provisions.

Also noteworthy is the case of the "Orleans Karok" half-blood community. This community applied to BIA to organize themselves under the half-blood provisions of the IRA in the 1970s. The Bureau originally informed the Orleans Karok that they needed to acquire land before they could organize, but the Bureau also made clear that acquisition of land for the group was possible and that afterwards the half-blood group could organize themselves. *See* December 6, 1976 letter from the Commissioner of Indian Affairs to Congressman Don Clausen, and November 18, 1977 Memorandum from the Sacramento Area Director from the Assistant Secretary for Indian Affairs. Further, the Bureau was actually willing to offer to provide assistance to the group as it moved through this process. *See* November 18, 1977 Memorandum from the Sacramento Area Director from the Assistant Secretary for Indian Affairs. (The December 6, 1976 letter and the November 18, 1977 Memorandum are included as exhibits to the Interior Ione Memorandum, provided at Tab V).

What makes the Orleans Karok half-blood community case particularly interesting, though, is that the Bureau decided not to proceed with the organization of that half-blood community because the Bureau determined that the Orleans Karok community was a subgroup of the greater "Karok" (today spelled "Karuk") Indian Tribe. As discussed elsewhere in this document, the Bureau found that the Karuk Tribe already had been recognized and therefore the Assistant Secretary "re-established" the government-to-government relationship with the greater Tribe. Just prior to that reestablishment, the Bureau informed the Orleans Karok half-blood community that it would not be necessary for them to organize as a half-blood community because the Bureau anticipated the reestablishment of the United States' relationship with the greater Karuk Tribe. In the case of the Tejon Indian Tribe, as in the case of the Karuk Tribe, it would be more appropriate (and more just) to focus on confirming the relationship between the United States and the greater Tejon Indian Tribe, rather than forcing a component of the Tejon Indian Tribe to act to organize without their fellow tribal members.

CONCLUSION

The well-documented record of the Tejon Indian Tribe demonstrates a level of intensity and breadth of involvement with the federal government that is unmistakable. It is significant that the United States' assumption of a trustee relationship with the Tribe has been authorized, implemented and/or acknowledged by all three branches of the federal government. It is also significant that there are a significant number of tribal elders alive today who were alive when BIA involvement

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with the Tribe was more pronounced; indeed, there are a significant number of tribal members still alive today who actually lived on the Tejon Ranch lands which were the subject of the Supreme Court decision in which the United States' trust relationship was acknowledged.

There is no question but that the United States has for many years, in many ways, acknowledged the Tejon Indian Tribe and the United States' trust duties to it. There is no question that Congress has never acted to terminate the Tribe. And there is no question that the Tribe that existed historically as the Kitanemuk Indians, that treated with the federal government in 1851, that was the subject of the United States' protective lawsuit in 1920, that continued to receive services and supervision through much of the twentieth century, and that until a generation ago still lived in its traditional village site at Tejon Ranch, is the same tribe that requests the Department's help today.

The Tejon Indian Tribe asks that the Department, with all due haste, confirm the Tribe's status as a federally-acknowledged tribe by including the Tribe on Interior's official list of federally recognized and restored tribes.

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