

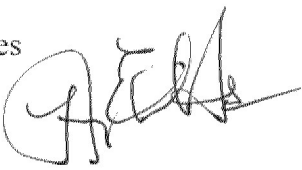
United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 24 2012

Memorandum

To: Regional Director, Pacific Region
Deputy Director, Office of Indian Services

From: Assistant Secretary – Indian Affairs 

Subject: Reaffirmation of Federal Recognition of Tejon Indian Tribe

On June 30, 2006, the Tejon Indian Tribe (Tribe), through Chairwoman Kathryn Montes Morgan, submitted information demonstrating that it has been officially overlooked for many years by the Bureau of Indian Affairs (BIA) even though its government-to-government relationship with the United States was never terminated. At one time, the Tejon Indian Tribe was recognized by the Federal Government and received services from the BIA. For reasons not clearly understood, however, it was simply disregarded in 1978 as the BIA developed its list of recognized tribal entities pursuant to the Federal acknowledgment regulations added to the Code of Federal Regulations at 25 C.F.R. Part 83 (acknowledgment regulation).

The Tribe requested that I review this matter and take action to reaffirm the Tribe's Federal relationship. On December 30, 2011, I sent a letter to Chairwoman Morgan, on behalf of the Department of the Interior (Department) and the BIA, that corrects this oversight.

It was not necessary for the Tejon Indian Tribe to go through the Federal acknowledgment process outlined in the acknowledgment regulation because its government-to-government relationship had neither lapsed nor been administratively terminated. The acknowledgment regulation does not apply to Indian tribes whose government-to-government relationship was never severed. Rather, it applies to tribes who have yet to establish such a government-to-government relationship when a previously existing government-to-government relationship has lapsed or when the government-to-government relationship was terminated through an administrative process. Here, an administrative error by the Bureau occurred in the initial failure to place the Tribe on the Federal Register list of entities recognized and eligible to receive services from the BIA. The administrative oversight, having now been identified, shall be corrected, and the Tribe's government-to-government relationship is now reaffirmed.

Prior Department Decisions to Reaffirm Federal Status of Indian Tribes¹

This is not the first time that the Assistant Secretary – Indian Affairs has reaffirmed an Indian tribe’s government-to-government relationship in this manner. There have been at least two other similar occasions.

Ione Band of Miwok Indians

On March 22, 1994, then Assistant Secretary – Indian Affairs Ada Deer issued a directive to include the Ione Band of Miwok Indians on the list of federally recognized tribes. In doing so, Assistant Secretary Deer reaffirmed statements made in a 1972 letter written by Commissioner of Indian Affairs Louis Bruce and agreed to accept a parcel of land to be held by the United States in trust for the Ione Band. The tract of land was specifically described in Bruce’s 1972 letter.

The Bruce letter, dated October 18, 1972, acknowledged the Band’s request to have a 40 acre parcel taken into trust and noted that the Secretary of the Interior (Secretary) had authority to take land into trust under Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465 (IRA). It further noted that the Band had not voted to reject the IRA. The Commissioner’s letter directed the Regional Director, then called an Area Director, to assist the Band in adopting a governing document that conformed with the IRA and agreed to accept the described land in trust for the Ione Band. Unfortunately, the acquisition was never completed. The Assistant Secretary’s 1994 letter reaffirmed the United States’ government-to-government relationship with the Ione Band based on the Department’s determination to acquire land for the Band.

The Department attempted to purchase land for an Ione group in the 1910’s and 1920’s. The group for which land was to be purchased was identified by a census made by an Indian agent in 1915. In 1916, the Indian Office obtained a deed and abstract of title for the purchase of land for the Ione band and the Department provided the Office with formal authority for the purchase. The Department undertook extensive, but unsuccessful, efforts to clear title to the land for the Band. In 1927, Superintendent L.A. Dorrington stated that the Department had “been considering the purchase of a tract for the Indians at Ione for the past several years.” In 1933, the next Superintendent informed the Commissioner of Indian Affairs about the general “Ione situation.” In 1941, the Department considered a petition from the “Indians of the Ione Valley” requesting the purchase of land. In 1970, two Ione individuals contacted the BIA about the status of the land on which they lived. In January of 1972, the California Rural Indian Land Project (CRILP) of the California Indian Legal Services proposed bringing a quiet title action on

¹ A detailed discussion of two prior decisions by Assistant Secretaries to reaffirm federal relationship with Indian tribes is provided in “Explanation to Supplement the Administrative Record, Muwekma Ohlone Tribe,” dated November 27, 2006, and signed by Michael Olsen, Principal Deputy Assistant Secretary – Indian Affairs. This document was filed with the court in *Muwekma Ohlone Tribe v. Salazar*, No. 03-1231 (RBW) (D.D.C.). The discussion in this section is drawn from that document.

behalf of the Ione Band and requested that the land be accepted and held in trust, which led to Commissioner Bruce's letter in 1972 (CRILP brought the action in July and received a favorable judgment October 31, 1972).

Assistant Secretary Deer's 1994 decision contained an implicit conclusion that a relationship between the Ione Band and the United States continued to exist until the 1970's and that a continuing government-to-government relationship was contemplated at that time.

Lower Lake Rancheria

On December 29, 2000, then Assistant Secretary – Indian Affairs Kevin Gover reaffirmed the Federal relationship with the Lower Lake Rancheria. Assistant Secretary Gover relied upon a recommendation to reaffirm Lower Lake prepared by the Central California Agency and forwarded by the regional office in California. The recommendation resulted from an initiative of the BIA central office to seek restoration of terminated California rancherias. The Central California Agency recommendation consisted of an analysis supported by 30 exhibits.

Assistant Secretary Gover's decision made a distinction between Indian groups that should be required to go through the Federal acknowledgment process and those that should not. Assistant Secretary Gover argued that groups not subject to the process were those whose "government-to-government relationship continued." He emphasized the "long-standing governmental relationship" of such groups. In contrast, he declared that previously acknowledged groups whose relationship with the Federal Government ceased to exist were subject to the acknowledgment process. Assistant Secretary Gover specifically stated that "the acknowledgment regulation provides a process" for groups to seek recognition "when a previously existing government-to-government relationship has lapsed, or when the government-to-government relationship was terminated through an administrative process."

Assistant Secretary Gover's reaffirmation of Lower Lake was based on his finding that its relationship with the United States had neither lapsed nor been administratively terminated. He characterized the Tribe's absence from the initial list of federally recognized tribes published in 1979 as an "administrative error" derived from an incorrect interpretation of the Lower Lake Act of 1956 that provided for the sale of the lands of the rancheria (P.L. 84-443, 70 Stat. 58). The United States purchased land to establish the Lower Lake Rancheria on January 25, 1916, and held this land in trust until the Act of 1956 authorized its sale. Assistant Secretary Gover noted in his decision that "the Lower Lake Rancheria lost its land pursuant to the Lower Lake Act . . . which sold its land for the purpose of establishing a local airport." He found that, in contrast to later termination legislation, the 1956 Lower Lake Act did not contain provisions that explicitly terminated the Lower Lake Rancheria. Assistant Secretary Gover thus concluded that the Federal relationship between Lower Lake and the United States had never ended.

Factual Basis for Finding that Omission of Tejon Indian Tribe from the List of Federally Recognized Tribes is the Result of Administrative Error

The Tejon Indian Tribe occupied the area known as the Tejon Ranch in Kern County, California.²

The Federal Government's withdrawal of land from the public domain in 1916 for the Tribe, as well as its repeated attempts to secure ownership of the land at the Tejon Ranch for the Tribe, provide evidence, through a unique history, of the United States' acknowledgment of the Tribe as a political entity under its jurisdiction. This acknowledgment has been interrupted only by the inadvertent omission of the Tribe by the Department from the Bureau's list of federally recognized Indian tribes – an error that was unintentionally carried through to successive lists.

Federal Government's Recognition of Tejon Indian Tribe

In 1851, Indian Affairs commissioners delegated by Congress negotiated 18 land cession treaties with various tribal groups, including one with the Tejon Tribe (Texon) and other tribes in its area.³ In 1854, the Superintendent of Indian Affairs in California described visiting the Indian reservation at Tejon as part of his official duties and noted that each of the tribes exercised its own policy authority.⁴

In 1873, the Tule River Indian Reservation was established by executive order for the Tejon (Manche Cajon) and other bands of Indians. But not all Tejon Indians moved there. As detailed below, successor Indian Affairs representatives and other Federal Government representatives described their efforts to secure land on behalf of the Tejon who remained on the Tejon Ranch lands as part of their official duties, some of whom met with the Tribe's Chief on the matter. The Federal Government took a three-pronged approach to securing land for the Tribe: attempting to purchase the Tejon Ranch lands for the Tribe; attempting to secure the Tejon Ranch lands for the Tribe through litigation; and withdrawing other public land for the Tribe.

Federal Government Efforts to Purchase Tejon Ranch Land for the Tribe

Prior to 1911, Indian agent Beale acquired 265,215 acres of the Tejon Valley, including most or all of the Tejon Indian Tribe's territory, as the land became available to private parties through patents issued by the Federal Board of Commissioners.⁵ The Tribe was able to live undisturbed

² Helen Giffen & Arthur Woodward, *The Story of Tejon*, 3, 5 (1942).

³ There is no evidence that the Senate's refusal to ratify the treaty was a denial of the Tribe's recognition or due to any unique circumstances surrounding the Tejon Indian Tribe; the treaty was part of a package of treaties with other tribes that the Senate did not ratify.

⁴ See letter from Thomas Henley, Superintendent of Indian Affairs in California, to George W. Manypenny (Aug. 28, 1854).

⁵ George Phillips, *Bringing Them under Subjection: California's Tejon Indian Reservation and Beyond, 1852-1864*, 254 (2004).

on the land until approximately 1911, when Beale's son conveyed title to the ranch to a Los Angeles business consortium, the Tejon Ranch Syndicate.⁶ Correspondence from 1911 to 1953 documents that the Commissioner of Indian Affairs and Indian agents made repeated attempts to secure ownership of some of this land for the Tribe, but the owners refused to sell:

- From 1911-1914, the Commissioner of Indian Affairs and Indian agents held internal discussions about how to protect the Tribe from attempts by the private owners of Tejon Ranch to evict to the Tribe.⁷
- In 1914 and 1915, Special Indian Agent Asbury made statements to the Tejon Ranch Syndicate describing the Government's desire to purchase some of the Tribe's aboriginal land to secure a permanent home for the Tribe.⁸
- In 1915, Special Indian Agent John Terrell recorded a census of the Tribe's members.⁹
- In 1916, Special Indian Agent John Terrell reported to the Commissioner of Indian Affairs on efforts to find the Tribe a suitable location for purchase or allotment on Government lands.¹⁰
- In 1924, the Bureau of Indian Affairs attempted to negotiate with owners of the Tejon Ranch to buy a tract for the Tejon Indians. While the owners refused to sell, they entered into an agreement allowing continued occupation by the Tribe so long as no further claims were made against the Ranch.¹¹
- In 1925, the BIA investigated the Tribe's condition and reported on its status, including its occupation of the Tejon Ranch.¹²

⁶ Helen Giffen & Arthur Woodward, *The Story of El Tejon* (1942).

⁷ See, e.g., Report from Special Indian Agent Asbury to Commissioner of Indian Affairs (Aug. 18, 1914).

⁸ Letter from Calvin Asbury, Special Indian Agent, to Harry Chandler (Aug. 19, 1914); Letter from Calvin Asbury, Special Indian Agent, to Harry Chandler (Jan. 25, 1915).

⁹ Report and Census from John Terrell, Special Indian Agent, to Commissioner of Indian Affairs (Dec. 12, 1915) ("Census of the Indians of El Tejon Band in Kern Co. Calif.").

¹⁰ Letter from John Terrell, Special Indian Agent, to Commissioner of Indian Affairs (Mar. 6, 1916); Letter from John Terrell, Special Commissioner, to Commissioner of Indian Affairs (Sept. 21, 1916).

¹¹ See Telegram from E. B. Meritt, Assistant Commissioner, to F.G. Collett (June 14, 1924); letter from E. B. Meritt, Assistant Commissioner, to L.A. Dorrington, Superintendent (June 19, 1924); letter from Hubert Work, Secretary of the Interior, to the Attorney General (Sept. 12, 1924); letter from L.A. Dorrington, Superintendent, to Commissioner of Indian Affairs (Oct. 18, 1924); letter from E.C. Finney, Acting Secretary of the Interior, to the Attorney General (Nov. 8, 1924).

¹² See Letter from E. B. Meritt, Assistant Commissioner, to L. A. Dorrington, Superintendent (April 3, 1925); Letter from L. A. Dorrington, Superintendent, to E. B. Meritt, Assistant Commissioner (May 8, 1925); letter from L.A. Dorrington, Superintendent, to Commissioner of Indian Affairs (Dec. 16, 1925).

- In 1927, Superintendent L.A. Dorrington wrote to the Commissioner of Indian Affairs regarding efforts to purchase the aboriginal land for the Tribe, the rental agreement for occupation of the land, and the futility of purchasing other land, as the Tribe would refuse to move.¹³
- In 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, recounting the agreement to occupy the Ranch for nominal consideration. The Secretary stated that he “question[s] the wisdom of disturbing [the Tribe] in their present occupancy of the privately owned lands or in any way disrupting their evident orderly and peaceful mode of living.”¹⁴
- In March 1938, the Assistant Commissioner of Indian Affairs again recounted the agreement for the Tejon Indian Tribe’s occupation of Tejon Ranch in a letter to a local California attorney.¹⁵

By the mid-1930’s, the Government had ceased its efforts to secure land for the Tribe due to an apparent compromise such that, for the time being, the Tribe was “content” living at Tejon Ranch for nominal rent.¹⁶ While the Federal Government halted its attempts to purchase the land at the Tejon Ranch, it continued to monitor the situation in which the Tribe was permitted to live on the privately owned territory. For example, when an earthquake struck in 1952, correspondence again reveals that Indian Affairs monitored the Tejon’s living situation as part of official duties,¹⁷ although it also determined that Indian Services’ appropriations could not be used for them.¹⁸

Federal Government Efforts to Secure Tejon Ranch Land for the Tribe through Litigation

From 1920-1924, the Department worked with the Department of Justice to secure the Tribe’s rights to Tejon Ranch land, first meeting with the Tribe’s Chief and endeavoring to open negotiations with the ranch owners,¹⁹ and then through litigation.²⁰ The litigation strategy to secure rights to the land ultimately failed when the United States Supreme Court ruled that the Tribe’s title had been extinguished as a result of its failure to comply with the time limitations imposed by the California Claims Act.²¹

¹³ Letter from L. A. Dorrington, Superintendent, to Commissioner of Indian Affairs 7 (Jun. 25, 1927).

¹⁴ See letter from Ray Wilbur, Secretary of the Interior, to Charles Curtis, Vice President (June 26, 1930).

¹⁵ See letter from William Zimmerman, Assistant Commissioner, to George W. Hurley (Mar. 28, 1938).

¹⁶ See letter from Ray Wilbur, Secretary of the Interior, to Charles Curtis, Vice President (June 26, 1930).

¹⁷ Letter from Leonard Hill, Area Director, to Commissioner, Bureau of Indian Affairs (Aug. 13, 1952).

¹⁸ Letter from Leonard Hill, Area Director, to Paul Herzog (June 3, 1953).

¹⁹ See, e.g., Letter from Special Assistant to the Attorney General to the Attorney General (April 24, 1920).

²⁰ See, e.g., Letter from George Fraser, Special Assistant to the Attorney General, to Harry Chandler, Tejon Ranch Syndicate (May 28, 1920).

²¹ See *United States v. Title Insurance and Trust Co.*, 265 U.S. 472 (1924).

Federal Government Efforts to Secure Public Lands for the Tribe

In 1916, the Department issued an order to withdraw from the public domain 880 acres of new land "for the use of the El Tejon band of Indians, Kern County, California."²² Tejon tribal members nevertheless continued to live on the Tejon Ranch lands because, as stated in a report issued by the Indian Affairs Commissioner, the land reserved for the Tribe was "steep hillside grazing land of poor quality without water."²³ For that reason, "no Indians liv[ed] on or directly adjacent to the lands."²⁴ In 1962, a Public Land Order restored the land to the public domain, revoking the 1916 departmental order that withdrew the land for the Tribe. The Order describes the reason for revoking the withdrawal as follows:

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.²⁵

The Land Order did not contain any express language indicating termination.²⁶ The sole reason for the revocation was the unsuitability of the land, rather than any characteristic or change in the Tribe.

Timing of the Development of the List of Federally Recognized Tribes

In 1979, the Bureau published its first comprehensive list of federally recognized tribes pursuant to the Department's newly adopted acknowledgment regulations.²⁷ No correspondence concerning the inclusion or exclusion of the Tejon Indian Tribe from the list has been discovered in the Sacramento Area Office, the BIA office with jurisdiction over the Tejon Indian Tribe. While the Department has not unearthed any documentation of the BIA's basis for not including the Tejon Indian Tribe on these lists, the timing of the development of the list of federally recognized tribes and the circumstances surrounding attempts to secure a reservation for the Tejon Indian Tribe support a finding that the Tribe was excluded from the list as a result of bureaucratic error resulting from either a misinterpretation of facts or an administrative oversight.

Shortly before the initial list of federally recognized tribes was developed, the Assistant Secretary for Public Land Management revoked the Public Land Order withdrawing lands for a

²² Memorandum from C. F. Hauke, Chief Clerk, to Secretary of the Interior (Nov. 7, 1916) (includes notation from Assistant Secretary Bo Sweeney, dated Nov. 9, 1916, approving withdrawal).

²³ Letter from Leonard Hill, Area Director, to Commissioner, Bureau of Indian Affairs 1 (Sept. 29, 1961).

²⁴ *Id.*

²⁵ 27 Fed. Reg. 7,636 (Aug. 2, 1962) (Public Land Order 2738).

²⁶ See Public Land Order 2738 dated July 27, 1962, 27 Fed. Reg. 7,636 (Aug. 2, 1962).

²⁷ 44 Fed. Reg. 7,235 (Feb. 6, 1979).

reservation for the Tribe.²⁸ The revocation occurred as a result of the investigation finding that the acreage was of poor quality, without water, and of no economic use to the Tribe.²⁹ Nevertheless, an apparent misinterpretation of the Public Land Order revocation, coupled with the fact the Bureau had ceased efforts to secure land on behalf of the Tribe, may have led Bureau personnel to believe, albeit incorrectly, that the Tribe should not be included on the list. During the same general time period, in the late 1960's and 1970's, the Bureau responded to Senate inquiries regarding the Tejon Indian Tribe by explaining the arrangement to allow tribal members to remain on land at the Tejon Ranch for nominal rent.³⁰ There is no evidence of any affirmative action or declaration by either Congress or the Department to terminate the Tejon Indian Tribe or to cease recognition of the Tribe. These circumstances point to an oversight in the list of federally recognized tribes, rather than an actual change in the status of the Tejon Indian Tribe.

Regardless of whether the omission was in fact a misinterpretation or an oversight, the mistaken omission from the list published in 1979 carried over to each list thereafter.

Conclusion

From the facts discussed above and others identified by the Department, it is clear that the United States previously and unambiguously recognized a political relationship with the Tejon Indian Tribe. Not only did the United States sign a treaty with the Tribe in 1851, it litigated on the Tribe's behalf – all the way to the United States Supreme Court – in an effort to obtain title to the land occupied by the Tribe. When that effort did not succeed, the United States made multiple efforts to purchase the same land for the Tribe. When the owners would not sell the land, the United States continued to monitor the welfare of the Tribe. The United States also withdrew lands from the public domain specifically to provide a land base for the Tejon Indian Tribe in 1916. Although the United States returned this land to the public domain in 1962, since the Tribe had made no use of it as the land was not fit for habitation, this act was not intended to terminate the Tribe. Congress has never formally terminated the Tribe's legal and political status.

The United States recognized the Tribe's status contemporaneously to the creation of the list of federally recognized tribes, so that the Tribe's omission from the list illustrates an administrative error or oversight. For example, the 1962 action that returned the land set aside for the Tejon Indian Tribe to the public domain was preceded by an investigation to ascertain the Tribe's situation and to determine the Tribe's need for the land. In addition, the responses by the United States to inquiries from Senators regarding the Tribe demonstrate a continuing awareness of the

²⁸ 27 Fed. Reg. 7,636 (Aug. 2, 1962) (Public Land Order 2738).

²⁹ Memorandum from Martin Molony, Realty Officer, to Area Director (Sept. 22, 1961).

³⁰ Letter from T.W. Taylor, Acting Commissioner of Indian Affairs, to Senator George Murphy (May 21, 1969); letter from William Finale, Sacramento Area Director, to Senator Ted Stevens (April 20, 1977).

awareness of the Tribe and its circumstances and a continuing relationship between the United States and the Tribe.

My decision to reaffirm the Tejon Indian Tribe was based on a relationship between the United States and the Tribe, which used and occupied the Tejon Ranch in the late 19th century and early 20th century. I did not attempt, nor am I now attempting, to decide who are the current citizens of the Tribe. Central to my decision, however, was a determination that the Tribe's citizens were enumerated on and are descended from the 1915 Terrell BIA Census and have maintained their tribal affiliation to 1979.³¹

Decision

By my December 30, 2011, letter to Chairwoman Morgan, I reaffirmed recognition of the Tejon Indian Tribe as an independent tribal governmental entity. Accordingly, the government-to-government relationship between the United States and the Tribe has been reaffirmed. This decision necessarily will involve further discussions of services to be provided to the Tribe, and the delineation of the Tribe's current citizenship roll.

cc: Director, BIA
Regional Solicitor's Office

³¹ The maintenance of tribal affiliation has been demonstrated by being enumerated as Tejon on, or having a parent or grandparent enumerated as Tejon on any of the BIA's 1929, 1930, and 1931 Indian censuses for Kern, Kings, and Tulare counties, or by other evidence.