

CALIFORNIA VALLEY MIWOK TRIBE

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February 5, 2020

VIA EMAIL AND U.S. CERTIFIED MAIL

Honorable Dianne Feinstein
United States Senate
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Washington, D.C. 20510
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San Francisco, CA 94104
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San Diego, CA 92101
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Re: California Valley Miwok Tribe Interference

Dear Senator Feinstein:

We write to you as the duly elected government of the California Valley Miwok Tribe, a federally recognized Indian tribe (the "Tribe"). The Tribe has been made aware of information and documentation indicating that you have used your position as a United States Senator to pressure the United States Department of the Interior, on behalf of your political associates, about our Tribe. The effect of your involvement paves a path for your political associates to reap huge business and financial benefits by developing an "Indian casino" in the name of our Tribe in the San Francisco Bay Area.

This is of deep concern and disheartening as it appears your efforts against our Tribe have been ongoing for more than a decade. They also strike us as a double standard, given your long-time, well-known, public opposition to other urban Indian gaming projects.

We ask that you respond to this information and clarify your position and intent relating to our Tribe and an alleged Bay Area casino development project. As we are sure you

understand, the Tribe takes assaults on its sovereign authority to govern itself very seriously. For this reason, while we recognize you are very busy, we ask that you respond no later than Thursday, February 20, 2020.

Summary of our Concerns

Based on information and records obtained by the Tribe, we believe your influence in our Tribe's affairs contradicts your long-standing public pronouncements against off-reservation gaming. Your involvement to date reveals clear conflicts of interest leading to outcomes that directly benefit your long-time political associates. This concerns and alarms the Tribe.

Documents show that your engagements in our struggle date-back to at least 2007. Your direct contact with government officials has resulted in steps and decisions by Bureau of Indian Affairs (BIA) officials to usurp the sovereign rights of the Tribe to govern ourselves by replacing the leadership of the Tribe with one of the Department of Interior's choosing and whom are not citizens of our Tribe or members of any Tribe for that matter. These individuals are American citizens with Indian heritage carefully selected to take over a tribe on behalf of casino development interests.

Most recently, the BIA pointed to your direct engagement on tribal governance issues. In a May 30, 2019 decision, the BIA Regional Director noted that the BIA was conducting review into the eligibility of individuals for citizenship of the Tribe, specifically noting that the agency's review was "[s]purred in part by an inquiry from Senator Dianne Feinstein."

Most troubling is that documents show that your involvement ultimately supports the goals of your personal and political associates' efforts to develop a casino in the Bay Area once replacement of the leadership of our Tribe is accomplished.

The Tribe is further concerned because information and records appear to indicate that your involvement and influence has purposefully or unwittingly led to an unwarranted intrusion into our Tribe's right to govern ourselves in contravention of the principles that underpin federal Indian affairs. Perhaps all of this would not be unusual in the complicated world of California Indian casinos, but in context, your involvement highlights a double standard given your well-publicized stance against off-reservation Indian casinos, particularly in the Bay Area.

Despite these appearances, the Tribe prefers to request clarification directly from you, rather than jump to conclusions in light of your reputation as a leading voice opposed to the development of Indian casinos in California

Background

The California Valley Miwok Tribe is a tribal community that predates California and the United States of America as a federally recognized Indian tribe, the Tribe retains inherent sovereign governing authority, subject only to Congress' plenary authority.

As you are no doubt aware, the federal government's posture toward Indian tribes has fluctuated over time. Following an era of treaties signed with Indian nations, the United States moved toward policies of assimilation. In the 1940s, the United States began the Termination Era, in which the federal government terminated its formal relationship with many Indian tribes across the nation. Almost two-dozen Indian tribes within California saw their government-to-government relationship terminated in the 1950s. Some of those California tribes reinstated their federal acknowledgment through litigation, most notably through a class action lawsuit, known as *Tillie Hardwick v. United States*. After winning back relations with the United States, those terminated tribes reorganized their governing bodies, subject to the scrutiny and administration of the BIA pursuant to an order of *stipulated judgment*. Any authority the Department derived from the *Tillie Hardwick Cases* is not applicable to our Tribe because our Tribe was never terminated.

Nonetheless, since roughly 2004, the BIA has been waging a sustained campaign to "reorganize" our Tribe and replace our Tribe's government with a new government preferred by the BIA. This, in itself, is not unique despite being a great offense to tribal sovereignty. In other cases, such as the St. Regis Mohawk Tribe, the BIA refused to recognize a Tribe's traditional government in an attempt to coerce the Tribe to adopt a more BIA-friendly constitutional-style government. *See Ransom v. Babbitt*, 69 F. Supp. 2d 141 (DCDC 1999). And, here, in California, in the words of your former colleague Senator Ben Nighthorse Campbell—in conducting a Senate inquiry into the origins of tribal leadership disputes—found, "the BIA removed the tribal leadership in favor of a challenging faction for the Buena Vista Me-Wuks in 2002."

The Tribe believes you have used the BIA's inconsistent record in handling tribal affairs to your political associates' advantage.

Double Standards as a Leading Opponent of Off-Reservation Casinos

What is most unsettling for the Tribe, and will no doubt be concerning to your constituents and the greater public, is our inability to square your long-time fervent opposition to off-reservation urban Indian casinos with your involvement in our Tribal affairs, which favor your political allies efforts to replace our Tribe's leadership so they can build a casino in the Bay Area.

Time and time again you have been a staunch opponent of off-reservation gaming. As far back as 2004 you made national news opposing Indian gaming interests in the Bay Area by the Lytton Rancheria. At that time you solidified your opposition to off-reservation gaming, especially in urban areas, writing constituents, "I am deeply concerned about the proliferation of off-reservation gaming and the increasing attempts by out-of-State gaming interests to place gambling casinos near urban areas in California."

In 2014, the *Los Angeles Times* quoted your position on Proposition 48 as "open(ing) the floodgates to countless more mega-casinos in local communities across the state," and declaring, "Enough is enough."

More recently you've opposed Scotts Valley's efforts to restore their lands in Vallejo, CA, even after termination by the federal government, because the project was located in an

urban area. In 2016, you are on record asking a reporter at KPIX-TV Channel 5 (CBS Affiliate), "How much gambling do we need to have in California?"

Despite a very public history of your consistent opposition to off-reservation Indian gaming and gaming in urban areas, we have evidence of a direct connection between your interference with our Tribe's sovereign right to govern ourselves and your support for a proposed Indian casino development in the East Bay. This evidence is revealed through secretive, private and behind-the-scenes meetings with your political associates and those with the power to push a casino deal through.

Conflicts of Interest

Adding to the Tribe's confusion and frustration are the seemingly blatant conflicts of interest that exist between you and your political associates including Mr. Arlo Smith.

First, information obtained by the Tribe indicates that a developer seeking to build a casino in the East Bay flew a congressman to Washington, D.C., in and around the summer of 2006, on his private jet to have dinner with you and Speaker Nancy Pelosi to discuss our Tribe.

In that same year documents reveal that your long-time political ally, Arlo Smith, lobbied on behalf of casino investor interests under California Valley Miwok Tribe's name. And information obtained by the Tribe shows in 2007, Mr. Smith engaged with California state officials in negotiations to build a casino in the Bay Area and had conversations with the Governor's office regarding a compact and specifics around the location of the project. Shortly after these clandestine meetings, you stepped in.

Most significantly, Mr. Smith wrote you in the summer of 2007, claiming the California Valley Miwok Tribe was "not organized" properly and requested that our current Council Chair, Ms. Burley, no longer be recognized and federal funding be pulled from the Tribe. You then wrote the Bureau of Indian Affairs on August 24, 2007 repeating Mr. Smith's claims to the agency. Your letter appears to have influenced Department officials as the BIA took immediate action. The BIA wrote you, February 8, 2008, that the Tribe's self-governance award money was being withheld and the United States would not conduct relations until the Tribe was "organized."

In early 2019, Mr. Smith, again, wrote you about our Tribe. Mr. Smith claimed recent decisions by the BIA needed to be re-evaluated and attached two letters from individuals. Those individuals are known as non-members and also known to be associated with casino development and to do business under the Tribe's name. Mr. Smith specifically expressed concerns about the Tribe's membership and governance and asked for your intervention. On March 6, 2019, you obliged Mr. Smith's request, writing the BIA, attaching Mr. Smith's and his associate's letters. In that letter you requested the BIA immediately consider evidence that impacted the potential membership and governance of the Tribe.

Recently obtained documents indicate that BIA officials, within days of your March 6, 2019 letter, again took action. Your influence resulted in an almost immediate internal review of the BIA's recent actions about the Tribe's membership and governance. The BIA's review

culminated in a May 2019 Decision by the BIA Pacific Regional director about the Tribe's membership and governance, which favored Mr. Smith's position. This interference, and back and forth with the BIA, further undermined the Tribe's ability to move forward without internal interference by the BIA.

Undermining the Democratic Process and the Will of the Voters

Your efforts outlined above have undermined the very democratic process and institutions that have put (and kept) you in elected office. Through your involvement and influence over the BIA in this matter, along with your political allies, including Mr. Smith, you essentially divest the State and Governor Gavin Newsom of lawful and elected authority to determine whether and where new Indian casinos may be located, *if any*. In turn, by undermining the State's elected officials, your behind-the-scenes efforts ultimately result in the divestment of voters' choice and power. This analysis is especially poignant when considered with your staunch opposition to the North Fork and Scott's Valley casino projects, both of which had broad local support.

Your involvement in our Tribe empowers the federal government to decide where a casino gets built in California and when. Your involvement allows bureaucrats to pick winners and losers. Ultimately, your efforts spearhead an effort to replace our Tribe's leadership with leadership that has cut a deal with developers to build a casino in the East Bay, undermines the democratic process for Californians.

Conclusion

Most significantly, your involvement in our Tribe's internal affairs places you in direct contradiction to your previous public stance as forcefully opposed to these type of casino projects in the Bay Area. Your continued involvement and influence over the BIA in direct or tacit support of proponents of off-reservation gaming in California will result in the creation of an Indian reservation near San Francisco.

Unfortunately, this matter is ongoing, and it is unclear when the BIA will take its next action. **For this reason, we require a response on or before February 20, 2020.** As you can appreciate, any hint of an attack on our Tribe's sovereignty causes us grave concern and has serious implications and consequences for Indian Tribes in California and throughout the nation. We hope you approach this matter with the seriousness it warrants and respond to us in a thoughtful and timely fashion. We are happy to meet with you to clear this matter up.

We look forward to your response and thank you for your attention to this matter.

Sincerely,

California Valley Miwok Tribe

By: *Silvia Burley*
Silvia Burley (on behalf of the General Council)

Rashel Reznor
Anjelica Paulk
Tristian Wallace

