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El Dorado County

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

EL DORADO COUNTY, a Political Subdivision of the State of California,

Plaintiff,

v.

GALE A. NORTON, in her Capacity as Secretary of the Interior; PHILIP N. HOGAN, in his Capacity as Chairman of the National Indian Gaming Commission; NATIONAL INDIAN GAMING COMMISSION; AURENE MARTIN, in her Capacity as Assistant Secretary of the Interior for Indian Affairs; and BUREAU OF INDIAN AFFAIRS,

Defendants.

SHINGLE SPRINGS BAND OF MIWOK INDIANS,

Intervenor.

CASE NO. CIV.S-02-1818 GEB KJM

DECLARATION OF WILLIAM MILES WIRTZ

I, William Miles Wirtz hereby declare that I have first hand knowledge of the following and hereby swear thereto under penalty of perjury:

My California State Bar number is 37298. I was admitted to the California State Bar from June 14, 1965 until December 31, 1998 when I voluntarily chose to assume inactive status.

While admitted to the California Bar I was employed as an attorney with the United States Department of the Interior, Office of the Regional Solicitor. ("Regional Solicitor's Office") from 1971 to 1999.

In that capacity I rendered services to the Bureau of Indian Affairs ("BIA"), United States Department of the Interior ("Interior"), one of the clients to which I was assigned.

In that capacity, I was involved with the interpretation and application of BIA policy regarding Indian Rancherias and bands and groups of Indians and individual Indians as well as federally recognized Indian tribes and reservations and lands held in trust.

In that capacity, I was aware of the BIA policy for the Sacramento Area Office and the BIA's Washington office regarding California Indian groups and the California Rancherias, including the Shingle Springs Rancheria. I was also aware that the Shingle Springs Band attempted to organize as a group in 1979.

In that capacity, I had access to various public records, historical documents and statements of federal public policy relating to California Indian groups and California Rancherias.

During my employment at the Solicitor's Office it was part of the course and scope of my duties to understand and articulate the policies and procedures of the BIA, including the process by which the federal government officially recognized Indian tribes.

During my tenure with the BIA it was the policy of the BIA that while a reservation was necessarily held in trust for the benefit of a particular tribe, it was not necessarily true that a Rancheria legally constituted either an "Indian reservation" or "Indian country."

FEDERAL POLICY REGARDING TRIBAL RECOGNITION AND GAMING

Federal recognition enables Indian tribes to participate in federal assistance programs and can result in the granting of significant rights as sovereign entities—including exemptions from state and local civil jurisdiction. Federal recognition is also one of the requirements for legal casino gaming under the Indian Gaming Regulatory Act ("IGRA").

In 1978 the BIA established a regulatory process intended to provide a uniform and objective approach to recognizing tribes. This process requires groups that are petitioning for recognition to submit evidence that they meet certain criteria - - basically that the petitioner has continued to exist as a political and social community descended from a historic tribe.

The term "Indian tribe" encompasses within its meaning all Indian tribes, bands, villages, groups, and pueblos as well as Eskimos and Aleuts. Before 1871 tribes could receive federal recognition through treaties. 25 USC section 11. In the modern era federal recognition of a tribe may be conferred only through one of three mechanisms - by an Act of Congress, through acknowledgement by the Interior (pursuant to the Indian Reorganization Act of 1934 as amended and then in 1978 pursuant to the Acknowledgement Regulations, noted below in para. 13) or by judicial means.

During my tenure the acknowledgement committee within the Washington D.C., BIA office reviewed all applications for federal tribal recognition based on criteria similar to the acknowledgement regulations noted below. In the mid 1970's Interior determined that it needed a uniform approach to evaluate these requests, although the BIA already had a procedure for recognition it was not set forth in regulation form. When the BIA adopted the

acknowledgement regulations in 25 C.F.R. Part 83 (effective October 1978 at 25 C.F.R. Part 54. See 42 Fed.Reg. 39, 361 (September 5, 1978), renumbered 25 C.F.R. Part 83 in 1982), the BIA was formally adopting that which the federal acknowledgement procedures and policies that had been in place. At all times during my tenure with the Regional Solicitor's Office, one of the BIA's primary requirements for federal tribal recognition (both before and after the adoption of the acknowledgement regulations) was that the Indian group demonstrate that a continuous political existence since historical times (i.e. existence prior to the non-Indians coming to North American up to the date of recognition.

Thus, in 1978 the BIA adopted its "acknowledgement regulations" which established a regulatory process with mandatory criteria for federal recognition. *See* 25 C.F.R. part 83. After the acknowledgement regulations were adopted, federal recognition could only legally occur by an Act of Congress, through judicial means or by following the acknowledgement regulations.

14. The seven mandatory criteria for recognition under acknowledgement regulations are:

a. The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.
b. A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.
c. The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.
d. The group must provide a copy of its present governing documents and membership criteria.
e. The petitioner's membership consists of individuals who descend from a historical Indian tribe or tribes, which combined and functioned as a single autonomous political entity.
f. The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe.
g. Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden recognition.

15. The essential requirement for acknowledgment as an Indian tribe is that the group has existed continuously as a community with retained political powers. The mandatory criteria in the regulations all focus on establishing this continuous existence - the continuation of the political entity. The underlying premise of this requirement - to demonstrate continuous tribal existence of the group - is that a tribe is a political, not a racial, classification. *Morton v. Mancari* (1974) 417 US 535, 554, n. 24. Thus, under the acknowledgment regulations, a tribe is not a collection of persons of Indian ancestry unless those persons and their ancestors are part of a continuously existing political entity. 25 CFR 83.3(a). This distinction is the premise underlying the succinct statement that "miscellaneous Indians do not make a tribe." *United Houma Nation v. Babbitt* (D.D.C. 1997) 1997 WL 403425 at 7. As stated in the preamble to the 1978 regulations: "Although petitioners must be American Indians, groups of descendants will not be acknowledged solely on a racial basis. Maintenance of tribal relations - a political relationship - is indispensable." 43 Fed. Reg. 39, 361-62 (Sept. 5, 1978)

16. The acknowledgement process begins when a group submits a letter of intent requesting recognition. A petitioner then must provide documentation that addresses seven criteria (noted below) that, in general, demonstrates continuous existence as a political and social community that is descended from a historic tribe. The technical staff within BIA's Branch of Acknowledgement and Research ("BAR") reviews the submitted documentation, provides technical review and assistance, and determines, with the petitioner's concurrence, when the petition is ready for active consideration. Once the petition enters active consideration, the BAR staff reviews the documented petition and makes recommendations on a proposed finding either for or against recognition. Staff recommendations are subject to review by the Department's Office of the Solicitor and by senior officials within BIA, culminating with action (denial or approval) by the Assistant Secretary- Indian Affairs. After a proposed finding is approved by the Assistant Secretary, it is published in the Federal Register and a period of further comment, document submission, and response is allowed. The publication is made to satisfy federal constitutional due process requirements and the APA. The BAR staff reviews comments, documentation, and responses and makes recommendations for a final determination that is subject to the same levels of review as a proposed finding. The process culminates in a final determination by the Assistant Secretary that, depending on the nature of further evidence submitted, may or may not be the same as the proposed finding.

17. Requests for reconsideration may be filed with the Interior Board of Indian Appeals within 90 days after the final determination. This review process can result in affirmation of the Assistant Secretary's decision or direction to the Assistant Secretary to issue a reconsidered determination.

18. Indian gaming, a relatively new phenomenon, started in the late 1970s when a number of Indian tribes began to establish bingo operations as a supplemental means of funding tribal operations. However, state governments began to question whether tribes possessed the authority to conduct gambling independently of state regulation. Although many lower courts upheld the tribal position, the matter was not resolved until 1987 when the U. S. Supreme Court issued its decision in *California v. Cabazon Band of Mission Indians* 480 U. S. 202 (1987).

19. Congress passed IGRA in 1988, establishing a regulatory framework to govern Indian gambling operations. Under IGRA only federally recognized Indian tribes may engage in gambling.

TRIBAL ORGANIZATION IN CALIFORNIA

20. In the early 1900's public attention began to focus upon the destitute state of the landless Indians located in California. As a result Congress, in the Act of March 3, 1905, 33 Stat. 1048, 1058, authorized an investigation of the existing conditions of California Indians and directed a report be made to Congress on "some plan to improve the same." The report was prepared by C.E. Kelsey, a San Jose attorney and officer of the Northern California Indian Association. In his report he recommended, among other things, that lands be purchased for the landless California Indians in Northern California.

21. Through various appropriations statutes in the early 1900s, Congress provided funds for the acquisition of land for "homeless California Indians." Those appropriations were for the benefit of groups of individual Indians, not for the benefit of organized tribes.

22. With those funds in hand, the United States Indian Service ("Indian Service"), [predecessor of the BIA], through Indian Agent John J. Terrell ("Terrell") among others, began looking for property.

23. As relevant to El Dorado County, the federal government acquired eighty (80) acres of land for the use of Indians then resident in the County by deed dated December 16, 1915. That property became known as the Dorado, or El Dorado, Rancheria. It was occupied sporadically by members of a family surnamed "Padilla." By the 1960s, the surviving members of the Padilla family elected to have the property deeded to them in fee. That transfer occurred on March 31, 1966, and the Dorado Rancheria was removed from BIA's property-holding records pursuant to the California Rancheria Act.

24. Also in the 1915 time frame, Terrell also contacted one Mike C. Murray ("Murray"), an Indian residing in the Nicolaus area of Sutter County, California, near the Sacramento River regarding the purchase of another piece of property for other homeless individual Indians. One of the earliest governmental public records pertaining to a 160-acre parcel of land within El Dorado County, commonly referred to as the "Verona Tract", is a January 14, 1916 letter from Terrell to the Commissioner of Indian Affairs, enclosing a "Census" of thirty-four (34) named individuals living in Sutter and Sacramento Counties ("1916 Census"). That 1916 Census disclosed that some of the persons it identified were actually Hawaiians. Murray was established as Terrell's contact-person because, although only three other persons named in the 1916 Census resided near Nicolaus where Murray did, he nevertheless "enjoy[ed] the respect of his neighbors." Terrell made a "suggestion to move and colonize this band of Indians," to the foothills with the understanding that "they could still at proper season return to the valleys and secure the usual employment, returning to their mountain home for the winters."

25. Murray also advised Terrell of "another band of Indians at present living from 25 to 30 miles to the south from Sacramento and Sacramento County, very similar situated to those of his band," which Murray thought would "be glad to join them."

26. The Chief Clerk of the Indian Service responded by indicating that his office "favors the purchase of a small tract of land for the *combined bands* of Verona and Sacramento Indians, *provided* the two bands are willing to *consolidate for the purpose of receiving this benefit.*" (Emphasis supplied.) He also advised Terrell, however, that "the statement of 'Mike' alone should not be taken as conclusive evidence of" such willingness.

27. On February 10, 1916, Terrell responded to Murray's letter of January 25 by referring to "people at Nicolaus, Verona and those in the Sacramento Valley" as being "combined bands." Terrell suggested "the combining of your several small bands, aggregating about 70 Indians." He also referred to "the many bands and remnant [sic] bands of needy and homeless Indians."

28. On April 5, 1916, Terrell wrote to Murray about his general report concerning his effort to secure suitable land for "you[] *and the homeless-landless Indians in the Sacramento Valley below Sacramento.*" (Emphasis added) He stated his expectation that Murray had "taken the matter up with a number of the leaders of the landless."

29. This point was reaffirmed in Terrell's letter to Murray dated April 21, 1916, in which he made specific reference to having located the 160 acres which ultimately became known as the Verona Rancheria. He stated that he would be urging approval for the purchase of the 160 acres for "the remnant bands of Verona, Nicolaus, Sacramento and the Sacramento Indians, according to the census between 70 and 75 Indians." He asked Murray "to take this up with Chief Alex Blue, Bill Joe and the Adams Indians at Sacramento."

30. On November 18, 1916, Terrell wrote to the Commissioner, stating that he had obtained agreement for the sale and purchase of the 160 acres "to be considered in connection for a permanent home for the above named landless Indians [referring to 'Verona – Sacramento River – Indians'], *as well as other small bands and families hereinafter mentioned."* (Emphasis added) He referred not only to the 1916 Census of 34 Indians, but also to the "Alex Blue" and "Old Joe" remnant bands, to an Indian named B.J. Frost and his *family* who "desire[d] to join the Verona, Nicolaus, Sacramento Indians," and to "remnant bands of Indians at Aukum, Camino, Diamond Springs, Fairplay, Indian Diggins and Nashville in El Dorado County and Plymouth and Oleta in Amador County," opining that most of them would join the "above named Indians" in the event of a purchase. He referred to them as "nearby scattering remnant bands," and stated that it would take some time and effort "to eventually colonize the greater portion of all the above named Indians on this land, in the event of its purchase."

31. By letter dated December 4, 1916, the Chief Clerk of the Indian Service wrote to Terrell concerning the proposed purchase of the 160 acres "for the benefit of the Verona – Sacramento River Indians, *and possibly for other bands* which you state it is likely may be persuaded to join these Indians." (Emphasis supplied.) The Clerk noted that his office believed that the purchase should be effected, to "make a home for practically all the Indians in that vicinity," but that before that was done, Terrell should

> . . . show why you have included in the census submitted with your letter of January 4, 1916, some Hawaiians. These are not Indians, and the fund for the purchase of California lands could not properly be expended on them unless by reason of affiliation or adoption into the band they have become a part of it. Apparently some of the Indians in this band are living in Sacramento, California, and if they have adopted the habits of civilized life, please justify further your recommendation that land be purchased for them.

(Emphasis added)

32. Terrell, by letter dated December 30, 1916, responded that he had been under the impression that the Hawaiians might be considered "by reason of intermarriages and affiliation with the native Indians."

33. On September 9, 1917, Terrell wrote to the Commissioner with a monetary estimate for the costs of land purchases for landless Indians throughout Northern California, stating that the suggested purchase of 160 acres for $1,400 "will reasonably take care of the few scattering [sic] landless Indian *families* of Sacramento, Sutter and Yolo Counties." (Emphasis supplied.)

34. Terrell wrote to the Commissioner on December 3, 1917, with a listing of twenty-four (24) named Indians. As to the Hawaiians, he stated that

> . . . it is not likely that these Hawaiian Indians or their families will desire to join in this proposed new home, at lest [sic] for a number of years yet. [¶] My information is that these Hawaiian's [sic] who married the native California Indian women, mostly full bloods, are very much attached to their women and children, therefore, will not likely desert them.
>
> * * * * *
>
> The probabilities are that sooner or later most, if not all the Indians of these Hawaiian Indians, will desire to go upon this home. At least after their deaths, as will be noted from census they are growing old, their families will surely desire to identify themselves with these, or rather, reidentify themselves with these two remnant bands.
>
> * * * * *
>
> In my opinion there will be from time to time landless Indians of small remnant bands now scattered in the counties of Eldorado [sic] and adjoining to the south and west who will desire to take refuge in this proposed home.

35. The Indian Service Chief Clerk, by letter dated January 12, 1918, responded that Terrell was "requested to consumate [sic] the purchase . . . for the Sacramento-Verona bands of Indians." The Clerk noted specifically, however, that

> the purchase should be made for the 'landless Indians of California' and not for 'Hawaiian Indians' who may have intermarried with the California Indians. If any of this class of intermarried Indians desire to join the bands for whom the land is purchased, the Office will consider each particular case on its merits.

(Emphasis added)

36. The following month, by letter dated February 13, 1918, Terrell wrote to the seller, one Meldrum, noting that the 160 acres of property was "desired as the village home for the Sacramento, Verona and other landless Indians of California." (Emphasis supplied.) On September 19, 1918, however, Terrell advised the Commissioner that he had requested Meldrum to issue a deed to the United States "for the use and occupation of the Sacramento-Verona Band of Indians, Eldorado [sic] County, California." No reference was made to the "other landless Indians."

37. On March 11, 1920 a deed was issued to the United States "for the use and occupation of the Sacramento-Verona Band of Indians, Eldorado [sic] County, California."

THE SHINGLE SPRINGS BAND AND THE SHINGLE SPRINGS RANCHERIA

38. It was the policy and position of the BIA during my employment that the term "Shingle Springs Rancheria" specifically referred to the land only and not the Band. The term "Shingle Springs Rancheria" could not refer to the Shingle Springs Band which was not created until 1979, at earliest. Moreover, the Shingle Springs Rancheria is not held in trust, as noted in the documents evidencing title to the property, but is owned in fee by the United States "for the use and occupation of the Sacramento-Verona Band of Indians, Eldorado [sic] County, California."

39. A 1970 memorandum from the Sacramento Area Director, Bureau of Indian Affairs ("BIA"), to the Commissioner of Indian Affairs ("Commissioner") describes the

relationship of California Indians to the Rancherias acquired for them, including a specific reference to the Shingle Springs Rancheria:

> An example: [¶] In March 1920 the Shingle Springs Rancheria, containing 160 acres, was purchased for the use and occupancy of four Indian families totaling 19 individuals, living in or near Verona in Sutter County, California, and three Indian families totaling 15 individuals living in Sacramento. Of the total, five were non-Indian spouses. The known descendants of these folk, today living, total 22 family units comprising 54 individuals. Of this group, 29 live in the metropolitan area of Sacramento; 13 live within a 45 mile radius of Sacramento; one in Chicago, Illinois, and the remaining in eleven [sic] various parts of the State of California. None, at the moment, are living on trust lands, although several, having been advised on August 7, 1970 of their right to participate in the use and occupancy of this Rancheria have indicated an intention to apply for homesites there. Only a very few can be identified by ancestral tribal organizations.

(Emphasis added)

40. On January 31, 1979 the Shingle Springs Rancheria, but not the Band, was identified in the Federal Register as the "Shingle Springs Rancheria (Verona Tract) of Miwok Indians, California." 44 Fed. Reg. 7235, 7236.

41. I was specifically told by the Sacramento Area Director for the BIA, William Finale, in connection with unoccupied Rancherias that he proposed the Rancheria property for listing in the belief that by identifying the property, such identification would provide a basis for providing various government services and aid in the event that the Rancheria became occupied at some later time. I was specifically told by the Sacramento Area Director for the BIA that he did not believe that this action of identifying unoccupied lands under his jurisdiction would ultimately be taken as tribal recognition as he lacked the power and authority to federally recognize a group as a Tribe on behalf of the United States. As noted below, a group of Indians did in fact attempt to organize as the Shingle Springs Band in 1979 and began occupying the Rancheria a short time later.

42. Based upon investigation, federal officials including William Finale of the BIA held the position that the Rancheria property had never been occupied, except by squatters, from the time of its purchase in 1920 until approximately 1980.

43. The BIA was not listing a group of persons but rather the Rancheria property itself. This fact is supported by a document by BIA entitled "American Indians and Their Federal Relationship," published in March 1972, which identifies "Shingle Springs Rancheria (Verona Tract) (3) (unoccupied)." This reference is plainly to the property itself and not any type of political or tribal entity because of the reference to the fact that it is "unoccupied." In short, as early as 1972 the BIA was identifying the bare Rancheria property as some type of Indian land base, not as a tribal entity.

44. This practice was replicated in subsequent BIA administrative lists. In March 1978, the BIA prepared a list of "Traditional Indian Organizations (Recognition Without Formal Federal Approval of Organizational Structure)." **[Cite.]** Identified on that list was the "Shingle Springs Rancheria (Verona)." *Id.* On February 6, 1979, the BIA published in the Federal Register a list entitled, "Indian Tribal Entities That Have A Government-To-Government Relationship With the United States." 44 Fed. Reg. 7235. Included in that list

was an entry for the "Shingle Springs Rancheria (Verona Tract) of Miwok Indians, California." *Id.* at 7236. Just as with the 1972 and 1978 lists, the 1979 list identified the Rancheria and not a group of persons.

45. It is not until July 8, 1981, well after the effective date of the Acknowledgment Regulations, that the BIA identified the Shingle Springs Band, in addition to, the Rancheria as the relevant "tribal entity." 46 Fed. Reg. 35360. The 1981 list as well as subsequent BIA lists identifies the "Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California." *Id.*

46. In short, the Rancheria's (and later the Band's) presence on BIA's lists of federally recognized Indian tribes is not dispositive on the question of whether the Band has ever been legally recognized by the federal government as an Indian tribe through the administrative process, by an Act of Congress or by judicial means.

47. The facts establish that from 1916 until 1979 no entity -- sociological, political, economic or otherwise -- existed on the Rancheria or anywhere else that could have been recognized by the federal government as an Indian tribe. While efforts to organize a group occurred from 1970 until 1979, it is plain that these efforts were focused on receiving and managing property without any specific intent concerning recognition of tribal status of an historical group on the part of the BIA.

48. I have reviewed the transcript (Exhibit ___) of the hearing on September 8, 2003 regarding the Rule 12 Motions filed by the Shingle Springs Band and the federal defendants in this action. During my tenure with the Regional Solicitor's Office the BIA's position was exactly as stated by Judith Rabinowitz, counsel for the federal government: "That recognition [of the Shingle Springs Band] was not pursuant to administrative procedures..." Exhibit ___, 26:14-15.

49. Ms. Rabinowitz asserted to the Court that the Shingle Springs Band was recognized by a "course of dealings" (Exhibit ___, 26:17; 27:17-25; 29:2-4, 21-25; 30-31:1-25, 1). Mr. Cohen did likewise and further admitted that there are no known cases purporting or supporting the "course of dealings" argument proffered at the hearing (Exhibit ___, 36:9-12).

50. At no time during my employment did the BIA or Interior have a "course of dealing" or "pattern and practice" of recognizing individual Indians or Indian groups as federally recognized Indian tribes outside of the acknowledgement regulations found at 25 C.F.R. part 83 or the case-by-case process described in paragraph 12 above.

51. The Shingle Springs Band was not federally recognized as an Indian tribe during the time of my employment with the Office of the Regional Solicitor by any of the three methods noted above. Moreover, since there was no policy and practice of federally recognizing Indian tribes by "course of dealings" or "pattern and practice" during the time of my employment with the Office of the Regional Solicitor, the Shingle Springs Band was not federally recognized simply because Congress has never delegated the authority and power to an Area Director during my employment to federally recognize an Indian tribe. A tribe could only be recognized by submission to Interior's regulatory process in place at that time.

Executed this ____ day of December, 2003, at Sacramento, Sacramento County, California.

_____

William Miles Wirtz

Meeting August 11, 2011: Ed Knapp-Chief Assistant County Counsel; Hank Freeman and Kristen Mackey

- Ed Knapp asked why we were there. Kristen gave an overview of the situation of tribal identity theft. And stated that she knew that he already knew what she was talking about, because she had read what he had filed on the county case.
- He replied that it didn't matter what she said because it had already gone to court and the county lost because of the statute of limitations.
- He stated that all that mattered was that the county received a check for 7.5 million a year.
- He said that we were wasting our time interviewing anyone in the county, because they did not care either.
- He said that if the Miwok tribe brought the county 7.5 million that he would wonder what the county would do, and that it would be interesting.
- The group discussed Cesar Caballero's court cases briefly.
- Kristen said that on the basis of humanity how can the county not care? When the Tribe has official documents showing that the Shingle Springs Band of Miwok Indians (indigenous) are the 1934 IRA voting tribe and therefore the recognized tribe on the Federal Register, and they were the only Tribe here in El Dorado county in 1934, and that the Sacramento Verona Band of Homeless Indians were not in El Dorado County at the time of the vote. Kristen said that the Board of Supervisors knew that the Sacramento Verona Band was not the recognized tribe because they had published a statement as such. He again stated that all that matters is that the Sacramento Verona band is who gives the county their check, and gives him (Ed Knapp) his check.
- Kristen said that this is a legal issue, and asked why the county did not ask for official Bureau of Indian Affairs identification and documentation. Ed Knapp said legally speaking they had lost. Kristen asked again how they could not care on a human level about the truth. He stated again that the fact is that the county doesn't, because they are getting their money. Kristen told him that it was horrible what he just said.
- Ed Knapp told Hank Freeman that he needed to be careful how he represented himself to the county. That for one meeting he had represented himself as working for the FBI. At another meeting something else. He told him that Cesar represented himself several ways and that he, Hank, needed to be careful not to do that. Hank said that it was not true. That he had never represented himself as an FBI Investigator and that he had made it very clear that he was not. And that he had witnesses to that fact.
- Hank Freeman asked him if he had any other documentation with regards to the county case. He said that the only information that they had was the declaration of Bureau of Indian Affairs agent Miles Wirtz concerning the Indians.
- Ed Knapp asked how it was going for Cesar. Kristen said that it was a David and Goliath situation, because of the tremendous amount of money the Sacramento Verona Band has to fight the case; And Cesar (Tribe) has nothing. Later Ed Knapp said that it is so rare for a David to beat a Goliath that the story gets put into the Bible, and that he was convinced that it was a waste of Cesar's and everyone's time to fight this, and that he thought it was impossible for Cesar (Tribe) to succeed.

Statement to Board of Supervisors, November 13, 2012

My name is Kristen Mackey. I am speaking as a concerned citizen. I have not received and will not receive any financial benefit from what I am going to say.

The documents, letters and testimony that I am going to read from, is proof that you are considering signing an Amended Memorandum of Understanding between the County of El Dorado and a group of frauds and imposters who call themselves the "Shingle Springs Band of Miwok Indians", without using due diligence prescribed by your own rules of conduct.

The group of imposters and frauds, the Sacramento Verona band of Homeless Indians, that call themselves The Shingle Springs Band of Miwoks, have bullied and coerced with pay-offs, in exchange for the county's silence, and therefore put themselves into a position that has set a dangerous course for the people of this county. It is the Board of Supervisors responsibility to determine the legal status of entities with which they sign contracts.

According to the attorney for the Bureau of Indian Affairs who was responsible for reviewing applications for federal recognition of an Indian tribe, none has been received from the group of people currently on the Rancheria. It has also been demonstrated numerous times that none of that group has Bureau of Indian Affairs ID cards, identifying them as Miwoks. How then has due diligence been followed by the Board of Supervisors? The Board of Supervisors has knowingly signed fraudulent contracts, and supported fraudulent State Contracts. (See Board of Supervisors letter to State Assemblyman Isadore Hall III, dated August 7, 2012).

Included in the documents is a recap of a meeting in August of 2011 with Ed Knapp, Chief Assistant County Counsel, where he states that his office knows of the fraudulent situation, but, refuses to act because of the check the county receives every year.

Also included are excerpts of documents that reflect the original position of this county where it questions the federal recognition of the people on the Rancheria and their status as Indians. It is the duty of the Board of Supervisors to represent the residents of this county. So far, that responsibility has been ignored as it pertains to the original residents, the true Shingle Springs Band of Miwok Indians. Remember, there are consequences to such a breach of law and trampling of civil rights.

Case: El Dorado County v. Shingle Springs Band of Miwok Indians filed March 3, 2003 states the Board of Supervisors and county's position including the statement, "The (Tribes) Articles of Association indicated no connection to the Miwok Indians. Nor do the Articles of Association address the fact that several

of the original members of the Band were native Hawaiians and not of Indian Heritage."

Ten Years of Tribal Government Under I.R.A. "Indian Tribes, Bands and Communities Which Voted to Accept or Reject the Terms of the Indian Reorganization Act, the Dates When Elections Were Held, and the Votes Cast" states that the Shingle Springs Reservation Tribe voted June 13, 1935. The voting Tribe, the Shingle Springs Miwok Tribe is the county's Indigenous Miwok Indians. All Tribes that voted in the Indian Reorganization Act were federally recognized Tribes. The I.R.A. is a current controlling document for federally recognized tribes.

April 29, 2003 the County Board of Supervisors published a "Position Statement Shingle Springs Casino" where they state that "Under federal law, gaming is only permitted by a federally recognized 'Indian tribe' and only on 'Indian lands," that is, land held in trust for an Indian tribe. Records from the Bureau of Indian Affairs disclose that the two unrelated groups of Indians from Sutter and Sacramento Counties, jointly referred to at that time as 'Sacramento-Verona Band of Homeless Indians' for administrative convenience, never functioned historically as a tribe, never had any historic relationship with El Dorado county, and were never formally or properly 'recognized' by the federal government as an 'Indian tribe."

In the County's Memorandum of Understanding and Intergovernmental Agreement between the county of El Dorado and Shingle Springs Band of Miwok Indians dated September 28, 2006, signed by Jack Sweeney; Chair, Board of Supervisors, the county accepted millions of dollars for an exchange stated in the Nov. 7, 2012 letter to the Board of Supervisors, from County Counsel Louis Greene and Chief Assistant County Counsel Edward Knapp. The County agreed to "cease its efforts to oppose the Tribe's casino and interchange projects, and to refrain from assisting others in such an effort. The County has fully performed all of its obligations under the MOU. Among other things, the County dismissed its federal tribal recognition lawsuit."

In conclusion:

Do not imagine that you are exempt from prosecution. The case that addresses who the actual Shingle Springs Band of Indians is, will be heard during a jury trial scheduled for 2013. Case # CV- 03133 JAM-DAD. Your actions are being watched by Federal Judges, lawyers and the media. You have been warned and forewarned and you are fully aware of the fraud you are participating in. As you can see, your very own records demonstrate your knowledge, understanding and involvement in a perpetuated case of trickery. Your own words will condemn you.

I will not take questions from the Board of Supervisors.