



TUOLUMNE ME-WUK TRIBAL COUNCIL

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Testimony of Kevin Day, Tribal Chairman, Before the House Committee
Natural Resources on H. R. 3490, April 9, 2008

Good Morning Mr. Chairman:

My name is Kevin Day and I am the Chairman of the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria. Thank you for holding this hearing on H.R. 3490.

I'd like to start by giving you some background; the Tuolumne Band of Me-Wuk Indians is a small federally recognized California Tribe with an approximate membership of around 400 people. Our modern tribal government was organized under the Indian Reorganization Act in January of 1936. As you can see on the California State map (attached as Exhibit A) our small reservation is located in the western foothills of the Sierra Nevada, approximately one hour north of Yosemite National Park and two hours east of Sacramento. We operate a successful casino under a compact with the State of California, a new and very successful health clinic that serves both, native and non-native customers, a native plant nursery business, and numerous governmental service programs.

While we are proud of our success, our current tribal land base has presented us with some serious problems that we need your help to overcome. Presently, only 150 of our members are actually able to reside on our tribal lands, because all of our existing trust land is currently used for administrative offices or housing, or it is not well suited for new construction. In fact, a study of our unused lands has found that their rocky and hilly terrain is best suited for the grazing of livestock.

Lack of available housing for tribal members is one of our most serious problems. Today, we have approximately 64 on-reservation homes, which are fully occupied. Many of these homes are seriously overcrowded, and we are constantly finding ourselves addressing health and safety issues within them. Many of our off-reservation members wish to return to the reservation, but our lack of housing sites makes those moves impossible. To make matters worse, many of our children, who were raised on the reservation, are being forced to leave when they reach adulthood in order to find their first home. That is why the early passage of H.R. 3490 is so important to us.

H.R. 3490 is a very straightforward piece of legislation. It transfers three small parcels of surplus land from the Bureau of Land Management (BLM) to the Bureau of Indian Affairs (BIA) to be held in trust for the benefit of our Tribe. It also extends the boundaries of our reservation to encompass those new BLM lands as well as the other lands our Band has acquired in recent years. This reservation boundary extension is very important to us because many federal programs, including some Indian housing programs, draw a clear distinction between on and off-reservation assistance. While the Secretary of Interior has the legal authority to extend the boundaries of most existing reservations, he lacks that authority in our case because

our reservation, like many in California, was established by Executive Order. Thus, we need your help to accomplish this simple goal.

If you will turn now to the map which is attached to my testimony and labeled as Exhibit B, I would like to describe the parcels we are requesting to transfer. This map has parcels that are color coded in yellow, blue and green. The light and dark Yellow parcels are lands which are currently held in trust for the Tuolumne Band. The star in the light yellow parcel is our tribal headquarters and the star in the dark yellow parcel shows you where our tribal casino is located. This casino is operated pursuant to an existing compact with the State of California and in accordance with an existing Memorandum of Understanding with Tuolumne County. The Blue parcels are the BLM lands we are seeking to acquire, and the green parcels are lands which the Tribe currently owns in fee simple. Those lands are pending tribal trust acquisition under the normal fee-to-trust process.

All of the blue BLM parcels have been listed as “potentially available for disposal” on recent BLM land reports. The first parcel, identified as # 1, is located less than ½ mile from our existing tribal trust lands. That parcel contains a historic Tuolumne Me-Wuk cemetery. Because of the site’s cultural and religious significance, the BLM has, for all intended purposes, simply allowed the Tribe’s use and maintenance of the parcel for many years. This cemetery is still in use today. In fact, one of our Tribal Members was buried there less than three years ago. We have always sought to acquire this parcel in trust because of its deep cultural significance to our people, but our efforts have become even more desperate since the BLM has listed it as “potentially available for disposal.” Simply put, we cannot lose control of the graves of our people and of our ancestors.

The BLM parcel identified as # 2 is a small site of around 15-16 acres. As you can see on that map, this site is contiguous to lands already held in trust and in fee simple by the Band. This is a vacant parcel which was originally set aside by BLM, in accordance with the Federal Recreation and Public Purpose Act, for the establishment of an inter-tribal health facility and a tribal cultural center. Due to unforeseen circumstances, the intertribal health facility was never developed and the Tribe is no longer apart of the intertribal health consortium. We have located our health facility on other tribal fee land; however, we have notified BLM that we are still pursuing the use of this land for our cultural facility. Our goal is to use this parcel for a tribal fire and emergency center, a tribal cultural center and perhaps some tribal government buildings, none of which are related to gaming in any way.

The third BLM parcel, identified as # 3, is a slightly larger site of around 50 acres. Like parcel #2, it is vacant and it is also contiguous to our existing tribal land holdings. This parcel has been totally unused by the BLM for many years and our goal is to put it to use for tribal housing and tribal infrastructure buildings. Like I noted above, we cannot bring our people home to their own tribal lands unless we can provide them with a place to live.

The parcels identified in green are lands which the Tribe owns in fee simple. All of these parcels are currently awaiting a final transfer into trust. The Tribe submitted a standard 151 fee-to-trust application for these parcels and received the Secretary’s approval of that application on January 12, 2007. Unfortunately, that transfer of title has been held up by a frivolous appeal filed by a contiguous landowner who is seeking leverage to force the Tribe to buy their property at an inflated price. The BIA and the Tribe are both fighting that appeal vigorously and we have every reason to believe that the Interior Board of Indian Appeals (IBIA) will simply dismiss the case and order the land taken into trust as soon as it gets the time to read the case files. The IBIA is seriously understaffed and it has taken an average of two to four years for it to issue a final

decision on any appeal brought before it, regardless of the merits. Anything that you can do to help speed that process along in our case would be greatly appreciated.

With the exception of a small home-site of around 3 acres, which is surrounded by BLM Parcel #2, and which we are in friendly negotiations to acquire from its current non-Indian owner, every parcel of land encompassed within the new reservation boundaries drawn by H.R. 3490 is owned by the Tuolumne Band, either in trust or in fee. We are located in a Public Law 83-280 state, so the re-designation of our reservation boundaries will not alter the criminal jurisdiction over these parcels. Additionally, the fee properties at issue were already zoned residential when we acquired the title, and we have maintained that zoning under our tribal laws and started to prepare our housing development plans. The BIA has conducted a full environmental review under NEPA for the fee to trust acquisition, including our proposed uses for the parcels.

Finally, the Tribe and Tuolumne County have developed and executed a Memorandum of Understanding (MOU) which sets forth protocols for all interaction between the County and the Tribe. That Agreement, which was executed on January 16, 2001, has allowed us to maintain a good faith working relationship with our local governments. The MOU sets forth a process for the County and the Tribe to follow concerning any impacts that the County may experience when lands are taken into trust for the benefit of the Tribe. Our fee to trust application addresses potential tax impacts the County may experience. Thus, our future trust acquisition will have nothing but a positive impact on the County's tax base. We therefore believe that all of our local jurisdictional issues have already been resolved. In fact, Tuolumne County has signed written statements of support for the transfer of the BLM lands to the Tribe and for the Tribe's fee to trust application of the parcels codes in green. Those letters are attached to this testimony as Exhibits C. Finally, we have been working with our local Tuolumne Fire Protection District and they have also supported our fee to trust application by the letter found at Exhibit D.

In closing, I would like to make it very clear that this bill has nothing to do with gaming. Under Section 3 (a) the bill makes it clear that the BLM lands we are seeking to transfer shall be "held in trust by the United States for the benefit of the Tribe for non-gaming purposes". Additionally, as I just noted, the fee parcels being added to the reservation are already zoned residential and our housing and infrastructure development plans are already underway.

Mr. Chairman, I hope that I have provided you with all of the information that you require to report this bill to the House floor in the immediate future. I will be happy to answer any questions that you may have or provide you with any additional information that you need. Again, thank you for taking the time to entertain this very important bill for the Tuolumne Band of Me-Wuk Indians.