



Investigative Report of the Tejon Indian Tribe

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This is a version of the report prepared for public release.

SYNOPSIS

The Office of Inspector General initiated this investigation on January 17, 2012, after receiving information that Larry Echo Hawk, then-Assistant Secretary-Indian Affairs (AS-IA), “reaffirmed” the Tejon Indian Tribe of California (Tejon Tribe) without going through the acknowledgment process set forth in 25 C.F.R., Part 83, “Procedures for Establishing That an American Indian Group Exists as an Indian Tribe.”

We found that several American Indian groups, including the Tejon Tribe, submitted petitions requesting reaffirmation by the AS-IA. These petitions were outside the Part 83 acknowledgment process, which is administered by the AS-IA’s Office of Federal Acknowledgment (OFA). We could not find any discernible process used by Echo Hawk and his staff in selecting the Tejon Tribe for recognition above the other groups.

We found, moreover, that Echo Hawk and his staff did not consult with OFA or with Bureau of Indian Affairs (BIA) leadership before deciding to recognize the Tejon Tribe. Because OFA was not consulted, other American Indian groups with historical, genealogical, and ancestral claims to the original Tejon Indians were left out of the process. Not involving BIA leadership caused budgeting and operational difficulties for BIA, which in turn slowed down the process for providing Federal services to the Tejon Tribe. The AS-IA also denied subsequent requests by BIA for additional fiscal year 2013 funding, which was necessary to provide services for the newly recognized Tribe.

Our investigation did not reveal any apparent financial, business, or personal connection between Echo Hawk or his staff and the Tejon Tribe, its legal representative, or its financial backers.

BACKGROUND

Part 83: A Process for Acknowledging American Indian Tribes

Part 83 of 25 C.F.R. sets forth procedures for establishing that an American Indian group can be classified as a Federally recognized Indian tribe,¹ making the group eligible for U.S. Government benefits, protection, and services. The Assistant Secretary-Indian Affairs’ (AS-IA) Office of Federal Acknowledgment (OFA) implements the Part 83 process.

Part 83 requires that an Indian group petition the AS-IA in order to be officially acknowledged (that is, recognized) as an Indian tribe by the U.S. Government. The process begins when a group submits a letter of intent to be acknowledged through Part 83. The group next submits a petition for acknowledgment, accompanied by historical documents supporting its request. OFA evaluates the petition and supporting documents and then makes a recommendation to the AS-IA, which decides whether to acknowledge the group. When the AS-IA approves OFA’s

¹ Until a group of American Indians is Federally recognized, it is not referred to as a “tribe” by the U.S. Government. For the sake of simplicity, we will refer to the group at issue as the Tejon Tribe, or the Tribe, throughout this report.

recommendation, a notice is published in the Federal Register, where it can be viewed by the petitioning group, State and local governments, or other interested parties.

Section 83.7 of Part 83 establishes seven mandatory criteria for Federal acknowledgment. These criteria must be satisfied by documentation included in the group's petition:

1. The group must have been identified as an American Indian entity "on a substantially continuous basis" since 1900.
2. The main portion of the group must have existed as a distinct community from historical times until now.
3. The group must have autonomously maintained political influence or authority over its members from historical times until now.
4. The group must supply a copy of its present governing document, including its membership criteria. If the group does not have a written document, it must provide a statement fully describing its membership criteria and governing procedures.
5. The group members must be descended from a historical Indian tribe or from historical tribes that combined and functioned as a single autonomous political entity.
6. The petitioning group must be composed principally of people who are not members of any acknowledged American Indian tribe.
7. Neither the petitioning group nor its members can be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

The acknowledgment process can take years to complete under Part 83. At various times, however, AS-IAs have recognized American Indian groups as tribes without following the Part 83 process, using a practice known as "reaffirmation." Reaffirmation has been used to recognize tribes when a perceived administrative error has resulted in the tribe being left off the Federal Register's official list of Federally recognized tribes. The Department's authority for such reaffirmations is not, however, defined in law or regulation, and we have not located any Departmental Manual provisions or other published policy memoranda governing the practice.

In the past, two AS-IAs, Ada Deer and Kevin Gover, have reaffirmed Government-to-Government relationships with the Lower Lake Tribe of California, the Shoonaq' Tribe of Alaska, the King Salmon Tribe of Alaska, and the Ione Tribe of California without the tribes completing the Part 83 process. On December 30, 2011, then-AS-IA Larry Echo Hawk officially reaffirmed the Tejon Tribe of Bakersfield, CA, without following the Part 83 process.

The Tejon Tribe's Request for Reaffirmation

In July 2000, the Tejon Tribe submitted a letter of intent to the AS-IA to be Federally acknowledged through the Part 83 process. At that time, the group consisted of 211 members who claimed to be descended from Indians living in the area of Tejon Ranch, CA. The group did not, however, file a petition for acknowledgment as required under § 83.6 of Part 83.

In 2005, an executive from Cannery Casino Resorts of Las Vegas, NV, became acquainted with members of the Tejon Tribal Council. The casino, intending to enter into a gaming agreement with the Tribe, offered financial assistance to help the Tribe achieve Federal recognition. The

Tribe used the funds it received to hire a legal representative to assist it in its effort to be Federally recognized.

Based upon the legal representative's advice, in June 2006 the Tribe submitted a "Request for Confirmation of Status," asking that its status as a Federally recognized tribe be confirmed. According to the request, the group had been left off an official 1978 list of Federally recognized Indian tribes due to an unspecified administrative error. The Tribe claimed that some of its members appeared on a 1929 Indian census roll or were descended from persons on that roll, and that some members were descended from people counted in previous Indian censuses. In addition, the Tribe claimed an un-ratified 1851 treaty existed between its ancestors and the U.S. Government, and that the Tribe had received Federal services in the past. Carl Artman, the AS-IA at the time, decided not to take formal action to reaffirm the Tribe, but did approve certificates of degree of Indian blood for 35 Tribe members.

On December 30, 2011, when Echo Hawk reaffirmed the Tejon Tribe, there were six other American Indian groups requesting Federal acknowledgment or reaffirmation through other than the Part 83 process. Those groups were the Sandy Lake Band of Chippewa Indians in Minnesota; the Gabrielino-Tongva Tribe of California; the Mishewal Wappo Tribe of the Alexander Valley, CA; the Tsi-Akim Maidu Tribe of California; the Muwekma Tribe of California; and the Burt Lake Band of Chippewa of California.

Effects of Bypassing the Part 83 Process on the Tejon Tribe, Other Indian Groups, and BIA

In addition to not following the Part 83 process, Echo Hawk and his staff did not consult with OFA or with Bureau of Indian Affairs (BIA) leadership before deciding to reaffirm the Tejon Tribe. This decision had a direct impact on several Indian groups with ties to the Tribe, on the Tribe itself, and on BIA.

Because OFA did not have the opportunity to provide input, other American Indian groups that can claim ties to the Indians who originally lived in the area of what is now Tejon Ranch, just north of Los Angeles, CA, were left out of the recognition process. Research conducted by OFA in January 2007 and February 2012 revealed that the following groups have potential historical, genealogical, and ancestral claims to the original Tejon Indians:

- Tinoqui-Chalola Council of Kitanemuk and Yowlumne Tejon Indians (Petitioner #165);
- Kern Valley Indian Community (Petitioner #47);
- Fernandeno/Tataviem Tribe (Petitioner #158);
- San Fernando Band of Mission Indians (Petitioner #163);
- Sierra Foothill Wuksachi Yokuts Tribe (Petitioner #209);
- Monachi Indian Tribe (Petitioner #283);
- Chumash Council of Bakersfield (Petitioner #294);
- Tubatulabals of Kern Valley (Petitioner #318);
- Kawaiisu Tribe of the Tejon Indian Reservation; and
- Chumash Native Nation of Bakersfield.

Some of these groups had previously submitted their own petitions for acknowledgment through the Part 83 process. After Echo Hawk's decision to reaffirm the Tejon Tribe, the Tribe offered some members of these groups the opportunity to apply for membership in the Tribe.

In addition, according to BIA leadership, not involving them in the decisionmaking process caused budgeting and operational difficulties for BIA, thus slowing down the process for providing Federal services to the Tejon Tribe. Federal regulations require that newly acknowledged tribes receive funds for administrative and operational startup costs such as leasing and furnishing office space, hiring administrative personnel, and establishing basic tribal functions. The BIA budget for fiscal year (FY) 2012 did not plan for, or contain sufficient funding for, the Tejon Tribe's startup costs. A request by BIA to increase its proposed FY 2013 budget by including startup costs for the new Tribe was denied by the AS-IA's then-chief of staff, Paul Tsosie.

Besides startup costs, newly acknowledged tribes can receive Federal funding for services including basic education and healthcare. The amount of Federal funds a tribe can receive is determined by the number of enrolled members it has, and the members are usually identified as part of the tribe's petition for acknowledgment under Part 83. Because Echo Hawk bypassed the Part 83 process for the Tejon Tribe, the Tribe's members were not identified in advance. Therefore, the identification process is still going on as of the date of this report, leaving the Tribe without access to Federal funding for education and health services.

DETAILS OF INVESTIGATION

We initiated this investigation on January 17, 2012, after receiving information that Larry Echo Hawk, then-AS-IA, reaffirmed the Tejon Tribe of California without going through the acknowledgment process set forth in Part 83 of 25 C.F.R.

AS-IA Officials' Decision To Reaffirm Tejon Tribe

To understand the decision to reaffirm the Tejon Tribe, we interviewed AS-IA officials who were closely involved in the decisionmaking process. We spoke with Larry Echo Hawk; Paul Tsosie, then-Chief of Staff to Echo Hawk; and an AS-IA attorney advisor.

How the Decision Was Made To Reaffirm Tejon Rather Than Follow the Part 83 Process

We asked Echo Hawk why he decided to reaffirm the Tejon Tribe rather than follow the Part 83 process. He explained that the Tribe had been "previously recognized" by the U.S. Government, and that it did not appear on the 1978 list of Federally recognized tribes due to an administrative error. According to Echo Hawk, he had the legal authority to reaffirm the Tribe, and it was not required to go through the Part 83 process.

Echo Hawk also admitted that as early as his U.S. Senate confirmation hearing, certain Senators had complained about the Part 83 process in general. According to Echo Hawk, some Senators and members of Congress were displeased with the process, saying that it took too long, cost too much, and led to "unjust results." Echo Hawk said he was asked to reform the regulation.

Part 83 is the official administrative process for recognizing a tribe. It includes transparency provisions, including public notice, opportunity for public comment, and an appeals process, as required by the Administrative Procedures Act, 5 U.S.C. § 551, et seq. We asked Echo Hawk if there might be a perceived lack of transparency when the Part 83 process is not used for acknowledgment decisions. He agreed that it was possible but did not think it should have been a concern in the case of the Tejon Tribe because, in his view, the Tribe should not have been left off the Federal Register's list of recognized tribes. Echo Hawk said it was not fair to require Indian tribes that should have been recognized to go through the "onerous" Part 83 process.

When asked about the process he followed or criteria he considered in making the Tejon decision, Echo Hawk said he did not get deeply involved in the details of the decision. He could not remember the names of the attorneys from the Office of the Solicitor's Division of Indian Affairs (SOL/DIA) who worked on it, but he did recall discussing it with Patrice Kunesh, Deputy Solicitor for Indian Affairs, and her predecessor, Pilar Thomas. He said he relied primarily on Tsosie and the AS-IA attorney advisor to advise him.

The attorney advisor said he first started working on the Tejon decision around the end of 2010 and worked predominantly on it throughout 2011. He said that Echo Hawk and Tsosie asked for his opinion concerning the decision, but his primary responsibility was collecting and compiling background information on the Tribe and working with SOL/DIA. He acknowledged preparing the December 30, 2011 memorandum in which Echo Hawk reaffirmed the Tejon Tribe, but he did not recall whether he knew Echo Hawk's decision in advance of the memorandum.

We asked the attorney advisor if Echo Hawk had used or applied a definitive process or criterion to make his decision. He told us that Echo Hawk had consulted with SOL/DIA solicitors Patrice Kunesh and Michael Berrigan, and that a similar reaffirmation decision made in 2000 by then-AS-IA Gover may have influenced Echo Hawk.

During our interview with Tsosie, we asked if he supported the Tejon Tribe's request for reaffirmation. He answered: "I recommended that [Echo Hawk] do it. . . . It seemed like the right thing to do." He explained that Part 83 was a long and expensive process, and he disagreed with the general principle of requiring Indian groups to spend large amounts of money in legal fees "to prove to the Federal Government that they are Indian."

Moreover, Tsosie said, he believed the Tejon decision was within Echo Hawk's discretion, based upon precedent set by previous AS-IAs. He also said he thought that the Tejon Tribe had once been on the 1978 list of Federally recognized tribes, but were later left off due to a U.S. Government error. Tsosie later admitted, however, that he could have been mistaken about this. (Research by the Bureau of Indian Affairs [BIA] revealed the Tejon Tribe had never appeared on the list of Federally recognized Indian tribes.)

We asked Tsosie to explain any criteria used by Echo Hawk to determine if an administrative error had left the Tejon Tribe off the list of recognized tribes. He said that Kunesh and the attorney advisor examined documents and determined there had been a negotiated treaty that established a Federal relationship with the Tribe. Tsosie was unsure, however, of the types of

documents they reviewed and the origin of those documents, acknowledging that he did not examine them himself.

Tsosie also told us the leaders of the Tejon Tribe called him on various occasions over the years, asking if a decision had been made about their status. He said he told them that the solicitors were evaluating the request and it was taking a long time because they were conducting a thorough review. Tsosie said he felt at the time that the solicitors were taking too long, adding: “I didn’t really care about the merits of the decision. I just wanted a decision.”

Why Tejon Was Selected for Reaffirmation Over Other Tribes With Similar Requests

We asked Echo Hawk, Tsosie, and the AS-IA attorney advisor if other tribes have requested reaffirmation, and if so, why Echo Hawk chose to acknowledge the Tejon Tribe before them. Echo Hawk told us that Tejon had “pressed their issue forward.” When asked how the Tribe had “pressed their issue” over the other tribes, Echo Hawk responded: “They probably just submitted a letter . . . and they [came] in and they [met] with people in our hallway here and they put forth their case.”

Echo Hawk said that he knew of only one other group, the Gabrielino Tribe of Los Angeles, CA, that had made a request similar to Tejon’s. The attorney advisor confirmed that Echo Hawk had also expressed an interest in reaffirming the Gabrielino Tribe, but he did not know why.

Tsosie also told us he knew other tribes had requested reaffirmation based on administrative error. We asked why Echo Hawk chose to reaffirm the Tejon Tribe first, and Tsosie told us the Tribe “seemed the most ripe—the most ready.” Tsosie acknowledged that he had been influenced by the number of telephone calls he received from members of the Tribe, saying: “This was one of the tribes that was calling me off the hook. So I was, like, saying: ‘Just give them an answer.’”

We also asked about the possibility that the Tejon Tribe might establish gaming casinos, and whether this influenced Echo Hawk’s decision. Echo Hawk stated that gaming had no influence on his decision, but acknowledged that obtaining Federal recognition was the first step in the process toward tribal gaming. The attorney advisor said he did not know if the potential for gaming and casinos influenced Echo Hawk’s decision. He denied discussing the topic with Echo Hawk, but admitted that land acquisition and gaming regulations had been discussed with Indian Affairs officials. Tsosie admitted he had concerns about the Tribe’s potential future involvement in gaming, but said gaming would happen later in the process. Tsosie also told us he did not know the Tribe was receiving financial assistance from Cannery Casino Resorts; he said that the Tribe’s legal representative told him she was representing the Tribe for free.

Echo Hawk, Tsosie, and the attorney advisor denied having a personal or financial relationship with the Tribe’s legal representative or with any member of the Tribe. Echo Hawk acknowledged that the legal representative had worked for the Native American Rights Fund (NARF) and that a relative of Echo Hawk’s was an NARF executive; however, he denied that the legal representative’s employment at NARF influenced his decision.

The AS-IA Did Not Involve BIA Leadership or the Office of Federal Acknowledgment in the Decisionmaking Process

We asked whether BIA leadership were consulted during the Tejon decisionmaking process. Echo Hawk could not recall having any specific meetings with BIA officials on the matter. Other than meeting with the Tejon Tribe's representatives and their lawyers, he said, the decision was internal. Tsosie told us he called Amy Dutschke, Director, Pacific Region, BIA, 1 week before the decision was made, and she recommended they acknowledge the Tejon Tribe; he said he did not speak to anyone else in BIA. The AS-IA attorney advisor did not know whether Echo Hawk consulted with BIA leadership concerning the Tejon decision, or whether BIA directors supported the decision.

In addition, Echo Hawk could not recall at first if OFA historians, genealogists, and anthropologists were asked to review the documents provided by the Tribe to support its reaffirmation claim. He later acknowledged that OFA was not involved in the Tejon decision.

We asked Echo Hawk why OFA, as the office responsible for reviewing the validity of claims for acknowledgment, was left out of the decisionmaking process for the Tejon Tribe's reaffirmation. He answered: "Let's just stop right here. Now, what does the Office of Federal Acknowledgment do? They recognize tribes that have been unrecognized. . . . So why would you require a tribe that is recognized, or should have been recognized all along, to apply? . . . I don't think I have to ask the Office of Federal Acknowledgment to do legal analysis. Guess what? They don't have a lawyer."

Echo Hawk also stated that the Department's solicitors and SOL/DIA lawyers were responsible for determining if treaties had been signed and services provided to tribes, and so he believed they were "fully capable" of examining the Tejon Tribe's supporting documents.

The attorney advisor recalled reviewing documents indicating that OFA was involved in the Tejon decision around 2007 and 2008 and had provided information to Carl Artman, the AS-IA at that time. In these documents, the attorney advisor said, OFA opposed waiving the Part 83 process and reaffirming the Tribe. He was not aware of any involvement by OFA in the Tejon decision since late 2010. He was also unsure whether Echo Hawk consulted with OFA before he decided to reaffirm the Tribe. He was not aware of any genealogists, anthropologists, or historians—other than those assigned to OFA or employed by the Tejon Tribe—who had examined the historical documents submitted in support of the Tejon Tribe's request.

We asked all three men if they believed Echo Hawk's decision was based on the law or on historical evidence. Echo Hawk felt that it was a legal decision. Tsosie, however, said it was a policy decision. The attorney advisor said he believed it was a policy decision that took legal analysis into account.

Echo Hawk told us about a memorandum that his staff was preparing that would explain his decisionmaking process, address the issues concerning the Tejon Tribe's reaffirmation, and instruct Dutschke, the BIA regional director, on how to implement his decision. He said the memorandum had not been prepared prior to his decision because SOL/DIA recommended he

not provide details of the decision in his December 30 reaffirmation letter. When asked why he did not provide advance instructions to the regional director who would be tasked with implementing the decision, Echo Hawk told us that because other groups were coming forward with ties to Tejon, the process was becoming more complicated. The memorandum, “Reaffirmation of Federal Recognition of Tejon Indian Tribe,” was issued on April 24, 2012—almost 4 months after the reaffirmation letter.

The Role of SOL/DIA Solicitors in the Decisionmaking Process

We interviewed current members of the SOL/DIA staff to establish their roles in the Tejon decisionmaking process. Patrice Kunesh, Deputy Solicitor, said that she was “very involved” with the Tejon decision, stating that it was one of the first issues she worked on from Echo Hawk. She said she worked closely with former Associate Solicitor Edith Blackwell on the issue and then, after Blackwell left DIA, with Associate Solicitor Michael Berrigan. Kunesh said she had also discussed the Tejon decision with two SOL/DIA attorneys.

“Alternatives to Part 83” Memorandum Issued in 2010

In 2009, SOL/DIA was tasked with preparing a memorandum in response to Echo Hawk’s request to reaffirm the Tejon Tribe. Two SOL/DIA attorneys helped Edith Blackwell prepare a draft memorandum, which was presented to Echo Hawk by Pilar Thomas, then-Deputy Solicitor of SOL/DIA, in a meeting in March 2010. The two SOL/DIA attorneys were present during that meeting, as well as Paul Tsosie and George Skibine, Deputy AS-IA.

One of the two SOL/DIA attorneys told us that Thomas explained to Echo Hawk that he did not have the authority to waive the Part 83 regulations for the Tejon Tribe. Both attorneys agreed that Part 83 should not be waived, but Echo Hawk and Tsosie made it clear that they wanted to waive the regulations and reaffirm the Tribe. One of the attorneys said that Echo Hawk was “upset with Pilar for . . . not giving him the result that he wanted.”

After the meeting, the memorandum was changed from a legal analysis to a description of various “options,” one of which was reaffirmation. The final memorandum, titled “Possible Alternatives to Part 83 for Establishing Tribal Status,” was issued by SOL/DIA to Echo Hawk on August 9, 2010. One of the attorneys described the atmosphere at the time as “uncomfortable,” saying that pressure was being put on Thomas: “It was clear that [Echo Hawk] wanted to put Tejon on the list, and so the role of the Solicitor’s Office was to make it happen.” The attorney said she felt as if all of their jobs may have been at risk.

When we spoke to Kunesh about the “Alternatives to Part 83” memorandum, she told us that one of the first things Echo Hawk asked her to do as the SOL/DIA deputy solicitor was to take a “fresh look” at the memorandum. Kunesh implied that Echo Hawk wanted her to “see if there [was] any room around the edges” concerning the memorandum. She said the memorandum urged Echo Hawk not to reaffirm the Tribe and advised him to encourage it to go through the Part 83 process. When asked if Echo Hawk agreed with the memorandum, Kunesh replied that Echo Hawk was concerned that the memorandum did not fully reflect his “policy authority” as AS-IA.

We asked Kunesh what legal advice she provided to Echo Hawk concerning the “Alternatives to Part 83” memorandum and the Tejon Tribe. She did not consider the decision to reaffirm the Tejon Tribe to be a waiver of Part 83 because of the 1978 administrative error that had resulted in the Tribe being left off the list of recognized tribes. Kunesh said that based on historical documents provided by the Tejon Tribe, the Tribe’s relationship with the U.S. Government had never been terminated. Kunesh said the documents she reviewed included a 1915 census conducted by BIA, a series of censuses conducted in the 1930s, and a Supreme Court decision regarding the title and ownership of the Tejon Ranch on behalf of the Tejon Tribe.

Kunesh and Michael Berrigan both said that Echo Hawk had the authority to reaffirm the Tejon Tribe based on the legal precedent set by the two previous AS-IAs; Berrigan added: “The courts, when they looked at this, had recognized that it was possible to do it under the Assistant Secretary’s authority to waive regulations.”

We asked Kunesh and Berrigan if Echo Hawk ever clearly indicated that he intended to reaffirm the Tejon Tribe. Kunesh confirmed that it had been one of Echo Hawk’s priorities, and Echo Hawk wanted to see if it could be legally accomplished. Berrigan noted that Echo Hawk and his staff were primarily concerned with the legality of the decision, and Berrigan felt that his responsibility was to implement Echo Hawk’s decision. Kunesh also commented that when she was interviewed by Echo Hawk for the position of deputy solicitor, he made it clear that he preferred solicitors who provided legal advice and allowed the final decisions to be made by policymakers.

SOL/DIA’s Role in the Tejon Decision

Kunesh said she was not aware of a process used by Echo Hawk and his staff to determine which tribe to consider first for reaffirmation. She confirmed there were other groups with ties to the Tejon Tribe that were applying for recognition through the Part 83 process, but said they were not considered for reaffirmation because they had not submitted reaffirmation requests. Kunesh did not know whether Echo Hawk had considered the other Tejon groups when making his decision to reaffirm the Tejon Tribe.

Kunesh also said she did not have a personal or financial connection with the Tejon Tribe and was not aware of Echo Hawk or his staff having any such connections. Kunesh was not aware that the Tribe was receiving financial assistance from Cannery Casino Resorts and told us that the issue of gaming was not considered during the Tejon decisionmaking process.

Berrigan did not know of any legal requirement for the documents in the Tejon Tribe’s 2006 request for reaffirmation to be examined by anthropologists, genealogists, or historians. He also did not know whether anybody in SOL/DIA had examined the Tribe’s documents and determined that the Tribe had entered into a treaty with the U.S. Government. He explained that since the treaty had been negotiated but never ratified, it was not an actual treaty with the U.S. Government. Berrigan also did not know if anyone in SOL/DIA told Echo Hawk about the claimed administrative error concerning the Tejon Tribe. He later said, though, that Kunesh may have informed Echo Hawk of the possible error.

Berrigan told us he did not personally research the Tejon Tribe's request for reaffirmation. He said that the AS-IA attorney advisor helped to assemble the Tribe's documents, but he did not know who—if anyone—had actually examined them to determine their authenticity and the validity of the Tribe's request.

Berrigan also told us he assigned an SOL/DIA attorney advisor to help with the follow-up of the Tejon decision. He had the two SOL/DIA attorneys who had worked on the draft "Alternatives to Part 83" memorandum, both of whom had experience working with OFA, to assist. Berrigan knew that the two attorneys did not agree with Echo Hawk's decision to waive the Part 83 regulations and reaffirm the Tejon Tribe; they believed in following Part 83 because of the risk of litigation. We asked Berrigan if he agreed with them. He admitted that he probably would not have made the same decision, but said that it was not the attorneys' role to disagree with Echo Hawk—their job was to provide their legal opinion.

SOL/DIA was reorganized in October 2011 and the two attorneys were reassigned, thus removing them from the Tejon decisionmaking process. We asked Berrigan if the reorganization was done to take them out of the process. He said: "No—well, not intentionally anyway." On why the two attorneys in his section who had the most experience with, and knowledge of, the Tejon Tribe and Federal acknowledgment were removed from the Tejon decisionmaking process, he said that their views about the decision and the Part 83 process affected their ability to give an unbiased legal opinion: "They were not receptive to doing what the client [Echo Hawk] decided to do, and doing what lawyers do, which is to support the client's decision."

During our interview with one of the two SOL/DIA attorneys, he said he made it clear to Echo Hawk that he did not agree with reaffirming the Tejon Tribe. He explained that he did not agree with Echo Hawk's decision because Part 83 is the process by which acknowledgment should occur. He said that the solicitors had also advised against reaffirmation in the decisions by previous AS-IAs to reaffirm tribes.

The attorney told us that Echo Hawk decided to reaffirm the Tribe early in his term as AS-IA. He believed that Echo Hawk intended to reaffirm tribes from the time he came into office. He said that members of Congress were pressuring Echo Hawk to speed up the acknowledgment process. When asked if he felt Echo Hawk's decision was based on the law or on historical evidence, he thought it was "a gut policy issue."

We asked the attorney which members of Echo Hawk's staff worked on the Tejon decision. He said that Tsosie "was very much into it," along with the AS-IA attorney advisor. He confirmed that Echo Hawk did not consult with the BIA Director or Deputy Director before deciding to reaffirm the Tejon Tribe. We asked him if previous AS-IAs had consulted with BIA leadership before issuing their reaffirmation decisions, and he said that AS-IA Gover had given BIA the opportunity to consult with and provide information to him. The attorney also thought that the previous AS-IAs consulted OFA before making their decisions.

The attorney confirmed that other American Indian groups had been requesting reaffirmation at the same time as the Tejon Tribe, and stated that the Tribe was not at the "top of the list." He did

not think that Echo Hawk was aware that other tribes were requesting reaffirmation, but said: “He should have been. . . . It was all through the documentation.”

We asked the attorney if gaming was discussed during a meeting held with the Tejon Tribe’s attorneys in 2006. He said he did not believe that the Tribe was only interested in reaffirmation so that it could receive Federal housing services, as it claimed, because a tribe in California can receive trust-fund distributions from gaming casinos even if it does not have a casino itself. He believed the gaming industry was financing the attorney fees for the Tejon Tribe. He did not think, however, that gaming influenced Echo Hawk’s decision to reaffirm the Tribe.

The attorney felt the Tejon Tribe would have been acknowledged if it had gone through the Part 83 process, and that “at the end of that process we would have known who the members were, who the leaders were, and what their membership standards were.” He explained since the process was not followed, the members of other groups who might have ties to the Tejon Tribe were not identified.

When we interviewed the other SOL/DIA attorney, she told us that after she and her colleague prepared the draft “Alternatives to Part 83” memorandum, they were “cut out” of any further meetings on the Tejon decision. Like her colleague, she pointed out that the decision to reaffirm the Tribe did not include any mention of the other groups that claimed to be a part of the Tribe, something that would have been researched and settled if the Part 83 process had been followed.

The attorney said that when the SOL/DIA section that she and her colleague worked in was reorganized in October 2011, they were sent to different sections and her colleague was no longer a manager. After the Tribe was reaffirmed, however, the two were asked to help Echo Hawk prepare the April 2012 memorandum explaining his decision. She believed this was because the attorneys who had replaced them to work on the Tejon Tribe issue were not as experienced in the matter as she and her colleague were.

The attorney stated that she did not believe Echo Hawk had the authority to make the decision to reaffirm the Tejon Tribe. She acknowledged that former AS-IA Gover had reaffirmed tribes, but she said those decisions were “interpreted by a court as an implied waiver,” did not “expressly waive the regulations,” and were not in the best interest of the Indians.

We asked the SOL/DIA solicitors if Echo Hawk’s decision was influenced by the reputation and persistence of the Tejon Tribe’s legal representative. Kunesh stated that other tribes had legal representatives who were just as well known and persistent. About her own relationship with the Tribe’s legal representative, Kunesh said she knew her by reputation but had never worked with her. Berrigan did not know why Echo Hawk chose to reaffirm the Tejon Tribe over other tribes, but he also stated that the Tribe’s legal representative was well known. The two SOL/DIA attorneys both believed the legal representative was influential in Echo Hawk’s decision to reaffirm the Tribe. One of the attorneys also mentioned that Larry Echo Hawk’s relative was an executive with the legal representative’s former employer, NARF.

Lack of Coordination With OFA

We interviewed Robert “Lee” Fleming, Director, OFA, who said he had 15 years of experience as a genealogical researcher and the director of OFA. Fleming described the AS-IA’s lack of coordination with OFA on the Tejon decision.

Fleming said he received an email from Paul Tsosie on December 29, 2011—the day before Echo Hawk issued the Tejon decision—indicating that Echo Hawk was considering waiving the Part 83 process and reaffirming the Tejon Tribe. Attached to the email was a draft letter addressed to the Tribe informing its members that Echo Hawk had decided to reaffirm the relationship between the U.S. Government and the Tribe. Tsosie indicated in the email that he wanted Fleming’s input on the decision within a “couple of weeks,” and asked Fleming to “keep your input close hold.”

Based on this email, Fleming believed he had 1 or 2 weeks to research the matter and prepare OFA’s response, but Echo Hawk issued his decision to reaffirm the Tribe the next day and did not give OFA the opportunity to provide in-depth analysis. Fleming felt that the December 29 email was intended to mislead him into believing he had several weeks to prepare a response to the proposed Tejon decision. Fleming said he did not know why Echo Hawk made the decision, especially since OFA probably would have asked him why he was attempting to bypass the Part 83 process.

Fleming also told us he was not aware of any other genealogists, anthropologists, or historians consulted during the decisionmaking process. Fleming said that Echo Hawk obtained legal guidance from SOL/DIA solicitors and from the AS-IA attorney advisor, but he felt the attorneys lacked the necessary expertise.

We asked Fleming if any other American Indian groups had ever requested reaffirmation based on evidence that they had been previously omitted from the Federal list of tribes. He said he knew of only three instances, when former AS-IA Gover asked OFA for advice on and recommendations for three Indian groups. OFA reviewed the requests and recommended that the AS-IA deny them and require the groups to go through the Part 83 process. Gover, however, disagreed and reaffirmed each group.

Fleming told us there were several possible repercussions of Echo Hawk’s decision to reaffirm the Tejon Tribe. He indicated that numerous American Indian groups were interested in reaffirmation, and some of them had already submitted their letters of intent. He believed that after learning of the Tejon decision, the Department would receive numerous FOIA requests from Indian groups. He also anticipated that some of these groups might take legal action because the Tejon Tribe was allowed to avoid the Part 83 process and thus appeared to receive preferential treatment.

The Role of BIA Leadership in the Decision To Reaffirm

To ascertain the extent to which BIA leadership was involved in the Tejon decision, we interviewed three BIA officials: Michael Black, Director; Michael Smith, Deputy Director for

Field Operations; and Amy Dutschke, Director, Pacific Region. Only Dutschke was contacted by AS-IA staff prior to the Tejon decision.

BIA Regional Director Contacted the Day Before the Decision Was Issued

Dutschke told us that she received an email from Paul Tsosie on December 29, 2011—the day before the Tejon decision was issued. The email contained two draft memoranda concerning the reaffirmation. She explained that she had a short telephone conversation with Tsosie immediately afterward and told him she supported the reaffirmation.

Tsosie asked her what the reaction of the tribes in California would be if the Tejon Tribe was reaffirmed. Dutschke cautioned him that some California tribes might not support attempts by the Tejon Tribe to engage in the gaming business. According to Dutschke, that was the first time she was involved in the decision to reaffirm the Tejon Tribe, and she assumed there would be further discussions.

The following week, on January 3, 2012, Dutschke received another email from Tsosie asking her to join a conference call with Echo Hawk concerning reaffirming the Tribe. She assumed they would be discussing the draft memoranda sent the week before, and she was surprised when the Tribe joined the conference call and Echo Hawk announced his decision to reaffirm it.

Dutschke felt that Echo Hawk and Tsosie should have discussed the matter with her, Black, and Smith before they made the decision to reaffirm the Tejon Tribe. She did not know why Echo Hawk chose to reaffirm the Tejon Tribe when there were other tribes with similar requests, and stated that there was no formal process by which the AS-IA selected tribes for reaffirmation.

We asked Dutschke to comment on the April 24, 2012 memorandum from Echo Hawk to her explaining the reaffirmation of the Tejon Tribe. She explained that the memorandum delegated to her office the responsibility for identifying all Indian groups under the “umbrella of Tejon.”

BIA Director and Deputy Director Not Consulted in Advance

Both Michael Black and Michael Smith told us that Echo Hawk did not consult with them about the decision to reaffirm the Tejon Tribe. Black said he remembered seeing a few emails regarding the Tribe before the decision was made, but he could not recall their content (see Attachments 28 and 29).

Smith told us that when previous AS-IAs made reaffirmation decisions similar to Echo Hawk’s, they had consulted with BIA and OFA beforehand and had involved them in the decisionmaking process. Smith said, however, that neither OFA nor BIA was consulted during the Tejon decision. When asked what process Echo Hawk used to make his decision to reaffirm the Tejon Tribe, Smith responded: “I don’t know. . . . I don’t think it’s [the] normal [process].”

Repercussions of the Tejon Decision

We asked Smith about any possible repercussions of Echo Hawk's decision to reaffirm the Tejon Tribe. He explained that Echo Hawk did not appear to know about the other American Indian groups with ancestral and genealogical ties to the Tejon Ranch. According to Smith, this created confusion for the BIA employees tasked with identifying whom Echo Hawk had actually reaffirmed and subsequently providing the required Federal services for them.

Smith and Black also explained the budgetary challenge to BIA that resulted from Echo Hawk's decision. The Tejon Tribe had not been considered when BIA prepared its FY 2013 budget. According to Smith, BIA did not have sufficient funding in the budget to provide the required services for the Tribe. Smith said when he asked Tsosie to modify BIA's 2013 budget to add funding for the Tejon Tribe, Tsosie told him they would have to wait until they developed the FY 2014 budget, saying: "We've got our neck out there too far."

The Tribe's Legal Representative, Council Chairwoman and Members, and Financial Backer

We interviewed the Tejon Tribe's legal representative since 2005 to get more information about the process that led to the Tribe's reaffirmation. We also spoke with the chairwoman of the Tejon Tribal Council, as well as several Council members, about the decisionmaking process. In addition, we interviewed an executive with Cannery Casino Resorts to learn more about why he chose to support the Tribe financially.

Legal Representative Advised Tribe To Seek Reaffirmation

When asked to comment on the Part 83 process in general, the Tejon Tribe's legal representative said that while she had initially hoped the process would be fair, it had become "badly bogged down." She added that the process also relied on "ambiguous" criteria for consideration, making it more and more difficult for groups to achieve acknowledgment. She felt that both the regulation and the manner in which OFA managed the process needed to be changed.

The legal representative told us the Part 83 regulations "don't apply to tribes that already have a Federal relationship." She said the Tejon Tribe had had a continuous relationship with the U.S. Government from the date of the un-ratified 1851 treaty until 1962, when the relationship lapsed because the land the Tribe occupied was restored to the public domain.

The chairwoman of the Tejon Tribal Council explained that based upon advice from its legal representative, the Tribe discontinued pursuing acknowledgment through the Part 83 process and submitted its petition for reaffirmation in 2006. The chairwoman confirmed that the Tribe did not contact OFA and request assistance until it submitted its reaffirmation request.

Tribe Made "Persistent" Contact With AS-IA Staff During Decisionmaking Process

The Tribe's legal representative and various members of the Tribe said that over the years, they would meet periodically with AS-IAs Artman and Echo Hawk and with members of their staffs,

including representatives from OFA. She explained that in addition, she and key members of the Tribe would telephone and email Echo Hawk and his staff asking about the status of their request.

According to the legal representative, Echo Hawk told her that reaffirming the Tribe was “a top priority” for him. In September 2010, she said, Echo Hawk told her a decision would be made within 30 days. She added, however, that Echo Hawk was getting “pushback” from his staff and so the decision was not made during that timeframe. She acknowledged that in the summer of 2011 she prepared a letter to Echo Hawk on behalf of the Tribe. The letter indicated that the Tribe intended to take legal action against the Department if he did not make a decision.

The legal representative confirmed that Echo Hawk was aware of other tribes requesting reaffirmation based on administrative error, indicating the matter was discussed during meetings she attended with Echo Hawk and his staff. She believed, however, that Echo Hawk chose to reaffirm the Tejon Tribe over the other tribes due to the Tribe’s “persistence” and “compelling” history.

We asked the legal representative if she was familiar with one of the SOL/DIA attorneys who had worked on the draft “Alternatives to Part 83” memorandum. She said: “Yes, he considers himself the principal author of the acknowledgment regulations. There are other people who dispute that. . . . That’s kind of his bureaucratic baby.” She confirmed that he opposed reaffirming the Tejon Tribe, recommending that it go through the Part 83 process. She acknowledged that she complained to his supervisor, Patrice Kunesh, with whom she had a professional relationship, about him and his opposition to the Tribe’s reaffirmation.

We asked if the legal representative’s personal relationship with the NARF executive who was related to Larry Echo Hawk might have influenced Echo Hawk’s decision concerning the Tejon Tribe. She denied ever discussing the Tejon case with the NARF executive and said she did not have a personal relationship with Larry Echo Hawk or anyone on his staff.

The chairwoman of the Tejon Tribal Council confirmed that she and other Council members met with Echo Hawk and members of his staff in Washington, DC. She told us she was frustrated because the Tribe had been required to submit a second petition and supporting documents after AS-IA Artman chose to issue certificates of Indian blood rather than reaffirm the Tribe. When asked why Echo Hawk selected the Tribe for reaffirmation when other tribes were making the same request, she told us the evidence in the documents supported the Tribe’s claim, and added: “Because we’re so persistent, and we kept calling him and knocking on his door, sending him emails.”

We also interviewed the vice chairman of the Tejon Tribe, who said that the Tribe did not receive much assistance from BIA with its request for reaffirmation. Around 2008 or 2009, the vice chairman encouraged the Tribe members to send individual emails to Echo Hawk and Paul Tsosie in order to “flood their email” with questions about the status of the Tribe’s petition for reaffirmation. He had a subsequent phone conversation and a meeting with Echo Hawk, who indicated he intended to reaffirm the Tribe within just a few months. He told us that Echo Hawk wanted to reaffirm the Tribe, but the process of drafting a letter that would meet departmental

approval was taking a long time. He said that the SOL/DIA attorney and Lee Fleming of OFA opposed the reaffirmation and felt the Tribe should go through the Part 83 process.

A member of the Tejon Tribal Council told us he traveled with other members of the Tribe to Washington, DC, on two occasions to meet with AS-IA representatives. The Council member could not remember the date, but on the second trip he made to Washington, they met with Echo Hawk and the Tejon Tribe's legal representative presented "the history of the Tribe." When asked how Echo Hawk responded to the presentation, The Council member said: "I thought he was pretty interested in our history."

The Council member described the process the Tribe went through to obtain Federal acknowledgment as slow. He told us the Council chairwoman had been working for acknowledgment for 14 years. He said he thought OFA and members of Echo Hawk's staff disagreed about the acknowledgment process, and that the process would have been faster if AS-IA and Department personnel would "work together" to help American Indian groups with the process.

Another member of the Tejon Tribal Council said the Tribe had been seeking recognition for many years, primarily to obtain medical and housing services for the elderly Tribe members. This Council member also attended a Washington, DC, meeting between the Tribe's legal representative, members of the Tribe, and Echo Hawk. She could not recall the date of the meeting, but remembered it was several years before the reaffirmation. She said that during the meeting, Echo Hawk implied that he intended to reaffirm the Tejon Tribe and gave them the impression it would occur within the next "60 or 90 days." When asked why the reaffirmation took several more years, she, like the other Tribe members, explained that some SOL/DIA solicitors opposed the reaffirmation and felt the Tribe should go through the Part 83 process.

The Tribe's Connection to Cannery Casino Resorts

The Tejon Tribe's legal representative said that the financial support the Tribe received from the Cannery Casino Resorts executive "was really the only opportunity for the Tribe to get the backing it needed to pursue its recognition." She did not know how the Tribe became affiliated with the casino, but said that the Tribe and the company intended to engage in some type of gaming or casino venture.

The chairwoman agreed that the financial backing made it possible to afford the costs associated with the reaffirmation process. Of the executive's decision to provide financial assistance to the Tribe, she said: "He's a good man and he knows that there was a big wrong done, and he saw it and he wanted to help us." She declined to provide any specific details of the financial arrangement with the executive, citing a confidentiality agreement, but she did acknowledge that the Tribe intended to engage in the gaming business and that Cannery Casino Resorts would manage it. She said she was introduced to the executive in Los Angeles, CA, by a man affiliated with United Technologies of Hartford, CT.

We interviewed this individual, who said that in 2001, he went to California to assess the possibility of building power plants on American Indian reservations and became familiar with

the history of the Tejon Tribe and its pursuit of Federal recognition. According to the individual, in 2005 he contacted the Cannery Casino Resorts executive to see if he would be interested in providing financial assistance to the Tejon Tribe in return for future gaming opportunities. He said that the executive expressed interest in the arrangement and initially paid him an \$80,000 fee for his efforts.

We also interviewed the Cannery Casino Resorts executive, who confirmed that that this individual introduced him to the Tejon Tribe. He was, the executive told us, “just a guy who was working in Indian Country,” who had researched the history of the Tribe.

The executive said that around 2005 he met with representatives of the Tejon Tribe at the law office of White & Case, Los Angeles, CA, where they discussed the Tribe’s history. He explained that he thought the Tribe’s story “sounded very compelling,” and so he decided to offer financial assistance so that it could continue to pursue Federal recognition. Due to the confidentiality agreement with the Tribe, he declined to say how much money his company had invested, but he admitted that he had invested his own funds—“less than \$1 million”—in the Tribe. He acknowledged that the Tribe intended to engage in the gaming business with Cannery Casino Resorts as its partner.

The executive admitted this was the first time his company had invested in an Indian tribe that had not been Federally acknowledged. He reiterated that the investment was a business decision and said it was based solely on the Tribe’s historical Government-to-Government relationship with the United States and its history of being “disfranchised from the rights that they should have.” He said that he did not know Echo Hawk or any of his staff and did not have a personal or financial relationship with them or with the Tribe’s legal representative.

Other Groups With Ties to the Tejon Tribe

We asked the Tribe’s legal representative to comment on its genealogy. She told us its present membership was based on an early Indian census and that all of the Tribe’s current members could trace their ancestry back to the American Indians who appeared on that census. When asked if other Indian groups could legitimately belong to the Tejon Tribe, she responded there was only one, the Tinoqui-Chalola Council of Kitanemuk and Yowlumne Tejon Indians, and that this group’s representative was a relative of the chairwoman of the Tejon Tribal Council.

The chairwoman acknowledged that her relative was a descendant of the original Tejon Indians and that this relative had petitioned separately for Federal acknowledgment for her group. The chairwoman said that her relative could rightfully become a member of the Tejon Tribe, but she had never returned the membership application the Tribe sent her. The chairwoman did not know why Echo Hawk did not include this relative’s group when he reaffirmed the Tejon Tribe.

Another member of the Tribal Council also acknowledged that the group this relative represented had ancestral ties to the Tribe. We asked the Council member why Echo Hawk did not include this group when he reaffirmed the Tejon Tribe. She replied that if this relative wanted to be known as a Tejon Indian she could apply for membership to the Tribe, but she could not do that and still be a member of “whatever satellite tribe that she decided she is.”

The vice chairman of the Tribe confirmed there were other American Indian groups with genealogical ties to the Tribe. Like the other members of the Tribal Council, however, he made it clear that his was the only legitimate Tejon Tribe.

SUBJECT(S)

1. Larry Echo Hawk, former Assistant Secretary-Indian Affairs.
2. Paul Tsosie, former AS-IA Chief of Staff.

DISPOSITION

We are forwarding this matter to the Secretary of the Interior for any action deemed appropriate.