

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTEST OF:)	SAN DIEGO DISTRICT OFFICE
)	
Dianne Jacob, County Supervisor, District 2, et al.)	Case No.: 16084762
Against the Issuance of a License To:)	OAH No. 2017020457
)	
Jamul Indian Village Development Corporation,)	Protestants’ Reply Brief to
San Diego Gaming Ventures LLC)	Department’s Response to
Dbas: Hollywood Casino Jamul)	Protestants’ Request for Official
14191 Highway 94)	Notice
Jamul, CA 91935-3213)	
_____)	

Contrary to the Department’s assertion, Protestants, Helen Comer, Steven Comer, Donna Foster, Kevin Foster, Shannon Foster, Veronica Hoban, Robert Jackson, John Munnik, Kathryn Munnik, Theresa Murphy, Michael Murphy, Jocelyn Parker, Mclain Parker, Patrick Parker III, Linnea Peltola, Nadja Pretty, Sean Pretty, Dawn Scialabba, Larry Scialabba, Paul Scripps, Patricia Terry, Gregory Tyree, Kathleen Tyree, Patrick Webb, Debra Webb, Sara White, and Schuyler White (“the Webb Protestants), filed and served their Request for Official and Judicial Notice on November 14, 2016 on all parties.

1. The Protestants Do Not Seek any Determination as to the Status of the Jamul Indian Village

Contrary to the Department’s unsupported assertion, Protestants do not seek to have this tribunal determine the status of the Jamul Indian Village (“JIV”). Nor do Protestants make any challenge as to the status of the JIV, even though it is undisputed, and conceded by the federal government, that the JIV is a half-blood community of Indians that was not under federal jurisdiction in 1934. Exhibits P11, B, C, E, F, G, H, and I.

This tribunal has been delegated the ABC Department’s jurisdiction to decide whether the Applicants have met their burden of proof to establish that they are not operating a public

gambling nuisance on the land in question. As set out in greater length in Protestants' Reply Briefs to the Motion to Strike the Applicants Exhibit 1 and the Request for Judicial and Official Notice, the status of the JIV need not be decided for this tribunal to decide that the land in question does not qualify for gambling, because the Secretary of the Interior has made no Indian lands decision as to the land in question, and, as a matter of law, cannot decide that the land qualifies for gambling, because it was never taken into trust by the Secretary for a tribe under federal jurisdiction in 1934, and for that reason cannot have been proclaimed to be a reservation. 25 U.S.C. §§465, 467; *Carcieri v. Salazar*, 382-83, 388-90, 394-95, 398-99 (2009); *Sandy Lake Band of Miss. Chippewa ("Sandy Lake") v. United States*, 2012 U.S. Dist. LEXIS 63458, *3-4 (D. Minn. 2012); *Littlefield v. DOI* (D. Mass. 2016), 16cv10184, Doc. 87; 2002 Dept. of the Interior and Related Agencies Appropriations Act, Pub. L. No. 107-63, § 134, 115 Stat. 414, 442-43 (2001); 25 C.F.R. 151.3.¹

Thus, contrary to the Department's erroneous argument, the sole basis for Protestants' request for official and judicial notice is not to challenge the status of the JIV, or of the Applicants, which are subsidiary corporations with no ownership, right, title or interest in the land in question. As can be gleaned from Protestants' briefs, the sole reason for their Request for Official and Judicial Notice of Exhibits P11, A-M, is to demonstrate that the Applicants have failed to meet their burden of proof to establish that they are not operating a public gambling nuisance on the land in question, because it does not qualify for gambling, having never been taken into trust by the Secretary for a tribe under federal recognition in 1934, and for the same

¹ "No acquisition of land in trust status, including the transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary." 25 C.F.R. 151.3.

reason, has not been, and cannot have been, proclaimed to be a reservation.

Dated: June 9, 2017

WEBB & CAREY APC

/s/ Patrick D. Webb

Patrick D. Webb

Attorneys for Represented

Protestants