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Dorothy Alther, Senior Staff Attorney

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Palm Springs, California

Testimony of Dorothy Alther, Senior Staff Attorney with California Indian Legal Services

1. Introduction

I would like to thank the Honorable Troy Eid and the Commissioners for this opportunity to testify before the Tribal Law and Order Commission. I have practiced Indian law for 26 years and all but two of those years I have worked for Indian Legal Services. Through my career I have worked in states under the jurisdiction of 18 U.S.C. §1162 (commonly referred to as "P.L. 280") and states that are not subject to P.L. 280. I was a tribal prosecutor for the Suquamish Tribe in Washington State for two years and learned firsthand the importance of having well trained and experienced tribal law enforcement officers. When I returned to California in 1993 after my experience at Suquamish, I began to question why so few tribes in California had law enforcement departments and tribal courts. The resounding response was because of P.L. 280.

Both tribal leaders and representatives from the Bureau of Indian Affairs ("BIA") for years were under the misguided belief that P.L. 280 had divested tribes in California of their criminal and civil jurisdiction and therefore tribes could not maintain tribal police forces or a tribal court. After this misunderstanding was finally dispelled, the BIA then took the position that there was a distinction among California tribes, some were "historic" and some were "created." According to the BIA, the latter did not possess inherent authority to exercise concurrent criminal jurisdiction with the state under P.L. 280. All but a few tribes in California were deemed "created" tribes and thus lacked the authority to exercise criminal jurisdiction, which further stunted the development of tribal law enforcement and tribal courts. Finally, in 1994 Congress rejected the BIA's treatment of California tribes and amended the Indian Reorganization Act to make all tribes on equal footing, including California tribes.

Today, the BIA's position is that it does not have to fund tribal law enforcement in California because the responsibility for criminal law enforcement is "borne" by the state, not the BIA. As such the BIA allocates "zero" law enforcement funds to tribes in P.L. 280 states. This latest BIA position is at the center of the *Los Coyotes Band of Cahuilla & Cupeno Indians vs. Ken Salazar et. al,* Case Number cv-1448-AJB-(NLS).

Before discussing the *Los Coyotes* case I do want to acknowledge that we have seen change in California in the area of tribal law enforcement and tribal court development. Financial assistance through the Community Oriented Policing Services ("COPS") grant

program has assisted numerous tribes with establishing law enforcement departments. The Bureau of Justice Assistance ("BJA") grants have helped establish tribal courts, which are necessary to have effective law and order on the reservation. Unfortunately, these grant programs are limited to *establishing* law enforcement departments and courts but do not provide funding to sustain them, which brings me to why I have been requested to testify today.

2. *Los Coyotes Band of Cahuilla & Cupeno Indians vs. Ken Salazar et. al*

On February 27, 2009 the Tribe submitted a request for a 638 contract for tribal law enforcement funding under the Indian Self-Determination and Educational Assistance Act ("ISDEAA"), 25 U.S.C. § 450 et. seq. This was not the first tribal request for law enforcement assistance. Back on March 31, 1934 the Tribe requested law enforcement services in response to growing crime on the reservation. Sadly, more than seventy-five (75) years later the Tribe was still asking for law enforcement assistance and the BIA's response is very much the same as it was in 1934---simply, there is no funding.

The Tribe, federally recognized since 1889, has a land base of 25,000 acres consisting of mostly rugged terrain. Tribal membership is 316. Through a block grant from the Department of Housing and Urban Development, the Tribe administers and maintains 17 homes for its members. The reservation is surrounded by unoccupied federal lands under the jurisdiction of the United States Forest Service.

The remoteness of the reservation, dating back to 1934, has been a primary reason behind a plague of murders, thefts, shootings, narcotics, trespass and other violent and non-violent crimes. This criminal activity has involved tribal members but also non-Indians who see the remote reservation as a safe haven from law enforcement. Although the passage of P.L. 280 was intended to bring law and order to the Tribe by transferring the federal government's criminal jurisdiction to the state, P.L. 280 has utterly failed to meet its intended goal. The lack of effective law enforcement in California, one of the "mandatory" P.L. 280 states, is well documented by Carole Goldberg, Professor of Law at the University of California Los Angeles, both in her 1997 book "*Planting Tail Feathers: Tribal Survival and Public Law 280*" and in her and coauthor Duane Champagne's 2007 "*Final Report Law Enforcement and Criminal Justice Under Public Law 280.*"

Lack of local law enforcement staffing and funding, combined with a misunderstanding of P.L. 280 jurisdiction and of the tribal community, has made effective law enforcement by the local sheriff's office limited and in some cases, non- existent. When tribal members call for law enforcement either they are not responded to or they can wait for up to two (2) hours for services. The sheriff deputies for the Los Coyotes area are "Resident Deputies" and only work day shifts, 6:00 a.m. to 6:00 p.m. After 6:00 p.m. they have to be called out from home. On any given call-out, at least two (2) deputies are required to be on the call for their safety. So after 6:00 p.m. both deputies must stop what they are doing at home, change into their uniforms and meet together to respond to call on the reservation. On one occasion the Tribal Chief of Police called for assistance for a large fight with injuries in progress. One deputy responded but could not assist until the other deputy arrived. Two hours lapsed before the second deputy was on the

scene and made contact with the victims and suspects. On some occasions, even if a sheriff deputy does respond there is no arrest and no incident report made.

To combat crime and civil infractions on its reservation, the Tribe determined that the only effective means of policing its community was with its own tribal law enforcement officer. In 2000 the Tribe adopted its Peace and Security Code and in 2007 hired a Chief of Police. The Chief of Police was funded through a COPS grant from the U.S. Department of Justice. The funding was for only three years with each year requiring more tribal funds to compensate the officer. The funding has been depleted, which is a major reason the Tribe sought a 638 contract from the BIA.

Reservation life has improved immensely with the hiring of the Tribal Chief of Police. Just the presence of a patrolling officer has had a deterrent effect and when serious or violent crime does occur the Chief's immediate presence does and has prevented further injury. The Tribe's Chief of Police is a California POST certified officer, and he received his Special Law Enforcement Commission ("SLEC") from the BIA on August 14, 2007. The Tribe is committed to supporting its law enforcement department, which effectively enforces tribal law, federal law under its SLEC and as authorized, California Penal Code. The major obstacle to this support is funding, which brought the Tribe to the BIA.

The Office of Justice Service ("OJS") declined the Tribe's 638 contract request stating that because the Tribe was located in a P.L. 280 state. OJS allocates "zero" law enforcement funds for law enforcement for California tribes. As a direct result of OJS's "zero" funding, the Tribe's request for these funds exceeds the amount of funding it would take for OJS to provide the direct service. In support of its declination, OJS relied on ISDEAA 25 U.S.C. §450f(2)(D) which provides that a contract may be declined if:

> "the amount of the funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 450j-1(a) of this title;"

OJS's declination letter stated that because the BIA does not spend any money for law enforcement on Indian reservations in California, law enforcement is therefore not a program, function, service or activity that, as a component of its budget, the OJS provides directly to Indian tribes in California.

Following the declination, the Tribe requested an informal conference with the OJS to see if the contract issue could be resolved. Under BIA regulations if an informal conference is requested, the Secretary shall select a Designated Representative to oversee the conference and render a recommended decision to OJS. The OJS selected the Director from Indian Dispute Resolution Services as its Designated Representative. Both parties submitted legal briefs in support of their respective position. The Tribe argued that:

(1) the BIA's unwritten policy that it would not fund tribes in P.L. 280 violates the provision of the Administrative Procedures Act in that it should be promulgated as a "rule"

given the significant impact on tribes in P.L. 280 states and further the policy was arbitrarily applied and was contrary to law;

(2) the unwritten policy violates the Equal Protection Clause of the Constitution because in actuality the BIA does fund some tribal law enforcement departments in California as well as funding tribes in other P.L. 280 states;

(3) the unwritten policy violates the ISDEAA §450k in that it is a "nonregulatory" requirement prohibited under the Act; and

(4) the application of the funding policy breached the BIA's trust responsibility.

Additionally, the Tribe strongly refuted the OJS's statement that law enforcement in California is the responsibility of the state. The Tribe demonstrated that law enforcement on its reservation is a shared responsibility of the Tribe, the state and the federal government. Aside from serious felonies, law enforcement over tribally defined criminal and civil infractions and all tribal regulatory matters are addressed exclusively by the Tribe. Because the Tribe's Chief of Police holds an SLEC, federal law enforcement on the reservation is also provided by the Tribe. To further demonstrate its point, the Tribe provided the parties excerpts from the 1996 report titled "*A Second Century of Dishonor: Federal Inequities and California Tribes*" prepared by Professors Carole Goldberg and Duane Champagne that clearly refutes the OJS's view that the state is primarily responsible for law enforcement in California Indian Country[1]:

> "There are two problems with using Public Law 280 as an excuse for refusing to fund tribal law enforcement for California tribes. First, tribes in Public Law 280 states other than California are receiving Bureau funds for law enforcement and tribal courts. Second, the existence of state jurisdiction does not remove the need for tribal law enforcement, courts, alternative forms of dispute resolution, some of which are rooted in tribal traditions and customs. Each of these problems will be elaborated below.
>
> The second problem with the Bureau's position regarding funding and Public Law 280 is that tribes in Public Law 280 states continue to have substantial law enforcement and dispute resolution needs, even with the existence of state jurisdiction. In the more than forty years since its enactment, Public Law 280 has received four types of judicial interpretations that limit the scope of state jurisdiction:
>
> — Under the language of the statute, only statewide laws may be enforced under Public Law 280, not county or city ordinances. Thus, city rent control ordinances and county dog license ordinances have been held unenforceable in California because they are not laws of statewide application.

[1] Reprinted with the permission of Professor Goldberg

— Even statewide criminal laws may not be enforced under Public Law 280 if they are essentially "regulatory" rather than "prohibitory" in nature. The Supreme Court introduced this distinction in an effort to limit the corrosive effects of Public Law 280 on tribal sovereignty. Actually separating the "regulatory" from the "prohibitory" laws is a daunting challenge, however; the most one can say is that courts seem to focus on whether the state allows the activity under some controlled circumstances or whether the activity is completely outlawed. Nonetheless, it is clear that many state laws have been excluded from state jurisdiction as a consequence of efforts to apply the distinction. State bingo laws and speeding laws are only two examples of such exclusions from state jurisdiction. Furthermore, state civil laws that form part of a state regulatory regime, such as licensing laws, are not rendered applicable to tribes by virtue of Public Law 280.

— Certain matters fundamental to the definition and internal workings of the tribe, such as tribal enrollment and domestic relations matters may be outside the subject matter jurisdiction of the state, notwithstanding the enactment of Public Law 280. Although this question is as yet unresolved in the courts, it is arguable that freedom of association or inherent tribal sovereignty precludes any outside authority—federal or state—from making determinations about such matters as paternity involving tribal members. Attorneys representing tribal members in California have argued strenuously that Public Law 280 did not override such exclusive tribal jurisdiction. They have focused specifically on the fact that Public Law 280 makes no explicit reference to limiting the tribe's authority.

— Public Law 280 expressly denies states power to legislate concerning certain matters, particularly property held in trust by the United States and federally guaranteed hunting, trapping, and fishing rights. These exceptions to state jurisdiction were included in Public Law 280 because Congress feared that it would be abrogating treaty or statutory rights and would be responsible to compensate the tribes for the loss of these rights. Over the years, courts have interpreted these exceptions to state jurisdiction broadly. Thus, state zoning laws, laws restricting outdoor advertising, unlawful detainer or eviction laws, among others, are unenforceable on California reservations, with the possible exception of some fee patent lands within the reservations. State fish and game laws are unenforceable against tribal members on California reservations.

— Several statutes enacted after Public Law 280 have reduced the amount of jurisdiction available to states under the 1953 law, simultaneously increasing tribal sovereignty or federal power. For example, federal environmental laws such as the Safe Drinking Water Act give tribes rather than states primary enforcement responsibility for control of contaminants in drinking water on reservations. The Indian Gaming Regulatory Act of 1988 illustrates how a subsequent federal statute can eradicate state jurisdiction under Public Law 280. Of course, to the extent that state anti-gaming laws are "regulatory" rather than "prohibitory," they

never applied to reservations under Public Law 280. But the few purely criminal state gaming laws that became applicable under Public Law 280 are now inapplicable because the 1988 Act substituted a regime of tribal and federal jurisdiction. For Class II gaming, the Act explicitly prohibits state jurisdiction. For Class III gaming, the Act allows state jurisdiction, but only pursuant to a tribal-state compact. Otherwise, the law enforcement mechanisms are all tribal and federal.

With all these exclusions from state jurisdiction under Public Law 280, it is unrealistic to expect tribes to rely entirely on state government for their law enforcement and dispute resolution needs. Indeed, without tribal law enforcement and courts, there is a near vacuum of authority over certain problem areas, sometimes leading to violent or disruptive self-help measures.

In sum, the Bureau of Indian Affairs has not successfully defended California's meager allocation of law enforcement and court funding. California tribes clearly possess civil and criminal jurisdiction, even following the enactment of Public Law 280. To use the state's jurisdiction as a justification for not funding California tribes overlooks the treatment of tribes in other Public Law280 states, the absence of state jurisdiction over important matters of public safety and community welfare, and the inadequacies of state jurisdiction even where it exists. California tribes need funds to determine whether they wish to establish their own law enforcement and justice systems, either alone or as part of consortia of tribes. Some tribes may prefer to contract with state and local governments for the delivery of such services, or to retain the status quo. But whatever they may choose, California tribes should receive federal financial support that will allow for effective law enforcement and dispute resolution on their reservations."

Following the September 15, 2009 informal hearing the Designated Representative issued a recommended decision that OJS should not deny the Tribe's 638 contract request on the basis that the Tribe is located in a P.L. 280 state. OJS appealed its Representative's decision to the Interior Board of Indian Appeals ("IBIA") raising two issues (1) can OJS, under it regulations, appeal the recommended decision and (2) if not, is the decision binding on OJS. The IBIA said there was no right of appeal by OJS because its regulations provide that only the Tribe may appeal. The IBIA declined to address the second issue raised by OJS. Following the IBIA's decision, OJS issued a letter to the Tribe stating it was not bound by its Representative's decision.

On July 13, 2010 the Tribe filed a federal action against the BIA/OJS in the Federal District Court for the Southern District of California. The complaint raised the same claims and arguments as were made to the Designated Representative. After motions for cross summary judgment were filed and full briefing was complete, oral argument was held on October 26, 2011. On October 28, 2011the Honorable Judge Anthony J. Battaglia granted the Tribe's motion for summary judgment on three of the four counts asserted by the Tribe. On December 22, 2011

the Defendants filed a notice of appeal to the Ninth Circuit Court of Appeals. Briefing is scheduled for this spring and no oral argument date has been set.

3. Allocation of Law Enforcement Funding

As part of my testimony I have been asked to share my thoughts and ideas on how tribal law enforcement funds should be allocated in California. I acknowledge that this will be a complex and challenging task given the current allocation process used by the BIA to distribute law enforcement funds and the current lack of sufficient funds to meet all tribal law enforcement needs. The following are the issues I see and my recommendations.

Before any meaningful discussion can take place on how funding should be allocated in California, it is necessary for the BIA to understand what California tribal law enforcement needs are. This being said, I strongly recommend that OJS make a concentrated effort to learn about tribal law enforcement in California. Gathering crime statistics, making physical contact with police departments, visiting reservations and talking with tribal leaders and their respective chief of police is critical in understanding what is needed in California. The following are comments provided to me by a Chief of Police, who is a member of the California Tribal Police Chiefs Association ("CTPCA"), regarding funding and allocation. He believes that funding should be service driven in an effort to cover the needs of multiple tribes. For example, if a dispatching contract could be entered into under 638 by the tribes in San Diego County, OJS would have the ability to serve many tribal police agencies within the area. This example demonstrates that funding needs may not be limited to just funding a tribal officer.

California has just been assigned its own OJS Special Agent in Charge beginning in April of this year, and we are optimistic that she will be able to gain the understanding of what law enforcement needs are in California. The CTCPA is another resource that can assist OJS in learning the challenges, successes and needs of tribal police in California. The CTCPA was reactivated in 2009 in an effort to bring all Tribal Chiefs of Police together on a regular basis to discuss issues of mutual concern, share information and experiences, and most importantly to ensure that law enforcement issues are being addressed on the state and federal level. The CTCPA current membership includes 11 tribes and is expected to grow as more and more tribes move forward with developing their law enforcement departments.

Review and revision of the current funding allocation process is going to be necessary. In their declarations submitted to the court in the *Los Coyotes* lawsuit, George T. Skibine, Deputy Assistant Secretary for Management—Indian Affairs within the Department's Office of the Secretary and Darren Cruzan, Deputy Director for the OJS, (Attachments A and B) describe how the BIA appropriates its lump sum allocation for the seven areas of law enforcement programs. Allocations are made to all existing 638 contractors and Self-Governance tribes in the same amount that has been historically awarded. For example, if a tribe has a $500,000 638 contract for detention facilities the BIA has to continue to fund the tribe at $500,000. Next, law enforcement funding is allocated to meet OJS' direct law enforcement services provided to those tribes without 638 contracts. According to the BIA, with these two allocations there is little to no funding available for a new law enforcement contract such as the one sought by the Los Coyotes

Tribe. I further understand that the ISDEAA prohibits the BIA from reducing an existing 638 contract award to cover the costs of a new 638 contract award. Under this funding allocation process it will be necessary for additional appropriations in order to address California law enforcement needs. How to secure additional appropriations remains unclear.

4. Conclusion

While how to secure additional funding remains unclear, one thing that is clear is based on the 1996 work of Professors Goldberg and Champagne, law enforcement services in P.L. 280 states are not exclusively the responsibility of the state, but are also the responsibility of the federal government. This was reinforced in the November 9, 2000 opinion issued by the United States Department of Justice, Office of Tribal Justice entitled "Concurrent Tribal Authority Under Public Law 280." This opinion clarifies that P.L. 280 did not divest the tribes of their criminal jurisdiction and their jurisdiction is concurrent with the state. Also, the Department of Justice makes clear that the federal government retains "substantial" law enforcement authority in Indian County in P.L. 280 states by virtue of the fact that all federal criminal laws of general application are applicable there. (Attachment C)

I again thank the Commission for this opportunity to testify today on the important tribal law enforcement issues here in California.

ATTCHMENT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOS COYOTES BAND OF CAHUILLA & CUPENO INDIANS, Plaintiff, v. KEN SALAZAR, *et al.*, Defendants.	Case No. 3:10-CV-1448-AJB (NLS) Hon. Antony J. Battaglia Room: 12 Date & Time: October 14, 2011, 1:30 p.m. **DECLARATION OF GEORGE T. SKIBINE SUBMITTED IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT**

I, George T. Skibine, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I have worked in various capacities for the U.S. Department of the Interior ("Interior") and the National Indian Gaming Commission since 1977. Currently, I am the Deputy Assistant Secretary for Management -- Indian Affairs within the Department's Office of the Secretary. I have held that position since January 2011.

2. The Bureau of Indian Affairs ("BIA") provides a range of services, both through direct services and through funding agreements with tribes and tribal organizations. There are currently 1.9 million American Indian and Alaska Natives who each belong to one of 565 federally recognized tribes. In the context of providing direct services or contracts with tribes,

BIA provides a range of services as described in more detail below in paragraph 9. In the annual Department of the Interior and Related Agencies Appropriations Act, Congress appropriates funds in a lump sum for the "Operation of Indian Programs." Interior received $ 2,128,630,000 for the Operation of Indian Programs for Fiscal Year 2009 and $ 2,335,965,000 for Fiscal Year 2010. Interior anticipates receiving $ 2,329,846,000 for Fiscal Year 2011. For Fiscal Year 2012, the President has requested $ 2,359,692,000 for the Operation of Indian Programs.

3. Each year, Interior's appropriations acts contain similar language that provides some limits how certain funds from the lump-sum appropriation for the Operation of Indian Programs can be used. For example, the appropriations acts for Fiscal Years 2011, 2010 and 2009 all stated that:

- "not to exceed [a certain amount] shall be for welfare assistance payments;"
- "not to exceed [a certain amount] shall remain available until expended for housing improvement, road maintenance, attorney fees, litigation support, the Indian Self-Determination Fund, land records improvement, and the Navajo-Hopi Settlement Program;"
- "not to exceed [a certain amount] shall be available for payments for contract support costs associated with ongoing contracts, grants, compacts, or annual funding agreements entered into with the Bureau prior to or during [a given] fiscal year;"
- a certain amount "shall be for public safety and justice programs as authorized by the Emergency Fund for Indian Safety and Health, established by section 601 of Public Law 110-293 (25 U.S.C. 443c);"
- "not to exceed [a certain amount] [shall be] for school operations costs of Bureau-funded schools and other education programs;"
- "not to exceed [a certain amount] within and only from such amounts made available for school operations shall be available for administrative cost grants associated with ongoing grants entered into with the Bureau prior to or during [a given fiscal year] for the operation of Bureau-funded schools;"
- "up to [a certain amount] within and only from such amounts made available for administrative cost grants shall be available for the transitional costs of initial administrative cost grants to grantees that assume operation on or after [a given year], of Bureau-funded schools;" and
- "not to exceed [a certain amount] may be for official reception and representation expenses."

Public Law 111-88, 123 Stat. 2904, 2916-2917 (Oct. 30, 2009). Apart from these requirements, Congress places no other restrictions on the appropriations.

4. Congress bases its appropriations on the annual budget requests that it receives from the President. The budget request for the Operation of Indian Programs is contained in the United States Department of the Interior Budget Justifications and Performance Information – Indian Affairs (Budget Justification).

5. The Budget Justification takes about a year to develop. First, BIA gets general advice and direction from the President's Office of Management and Budget (OMB) and from Interior's Office of Budget on expectations for BIA's budget. BIA next holds meetings with tribal leaders to consult them on what to request in the budget. BIA then submits a budget to Interior's Office of Budget, which has the prerogative to change it. Afterwards, Interior's Office of Budget submits the budget to OMB, which also has the prerogative to change it. The final decision on what to request in BIA's budget lies with the President.

6. The Budget Justification follows a hierarchical structure required by congressional appropriations committees. The structure breaks down the President's budget request so that congressional staff can see its relevant parts. Under the appropriations account (in this case, Operation of Indian Programs), the Budget Justification describes five other hierarchical levels -- budget activities, budget sub-activities, program elements, sub-elements of programs, and at the lowest possible level of the hierarchy, a specific project for a specific tribe. The Budget Justification proposes funding amounts for each of these hierarchical levels.

7. After receiving the Budget Justification, Congress may hold hearings, ask Interior for written responses to questions, and meet with Interior officials to ask questions about the Budget Justification. If Interior agrees to a specific congressional request during a hearing or in response to a question, Congress sees that agreement as an obligation that Interior must meet.

8. Since Fiscal Year 1992, the Tribal Priority Allocation ("TPA") appears in the Budget Justification as a budget activity within the Operation of Indian Programs appropriation. TPA is used to provide a broad range of programs, functions, services, activities and benefits for tribes.

9. TPA's budget sub-activities include the following:

a) tribal government programs, such as Aid to Tribal Government ("AID");

b) funding and contract support for ISDEAA self-determination contracts and self-governance funding agreements;

c) human service programs, such as child welfare, welfare assistance, and the Housing Improvement Program;

d) education programs, such as scholarships, adult vocational education and Johnson-O'Malley funds for Indian children in public schools;

e) public safety and justice, such as fire protection and tribal courts;

f) community development programs, such as job placement and training, economic development and road maintenance;

g) resource management programs, such as agriculture, forestry, water resources, wildlife, parks, minerals and mining;

h) trust services, such as real estate services for probates and environmental quality, as well as title activities, and protection of other Indian rights; and 9) agency costs when BIA provides services directly to tribes.

10. The Budget Justification includes tables showing specific amounts of TPA funds requested for each federally-recognized Indian tribe. Congress sees the tribe-specific requests in the TPA tables as a commitment by Interior to allocate TPA funds as described in the tables.

11. Interior allocates TPA funds to every federally-recognized tribe each year. At each tribe's option, Interior either retains the TPA funds to operate programs for the benefit of the tribe or provides the TPA funds directly to the tribe. The Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA"), *as amended,* encourages tribal management of programs that would otherwise be administered by BIA on behalf of the tribes. The ISDEAA authorizes tribes to take over the administration of such programs through contractual arrangements with BIA or funding agreements with the Office of Self-Governance. BIA pays out TPA funds directly to a tribe that chooses to perform federal programs through ISDEAA Title I self-determination contracts. And, generally, the Office of Self-Governance, in the Office of the Assistant Secretary-Indian Affairs, pays out TPA funds to a self-governance tribe to perform federal programs through ISDEAA Title IV funding agreements. Otherwise, BIA uses a tribe's TPA funds to provide direct services to that tribe, in accord with the priorities and desires

established by the tribe for the use of those funds.

12. Historically, funds for law enforcement programs were part of the TPA process. However, funds currently appropriated for law enforcement (which comes under the public safety and justice sub-activity) are now listed as separate budget program elements. This means that Interior requests a single dollar amount for each of seven law enforcement program elements, including criminal investigations and police services; detention/corrections; law enforcement special initiatives; the Indian Police Academy; tribal justice support; law enforcement program management; and facilities operations and maintenance. Although Interior requests a single dollar amount for each program element, the Department takes its current funding obligations under the ISDEAA into account in determining these amounts. For example, if a tribe in a non-P.L. 280 state currently has a 638 contract for $500,000 for detention services, the Department must continue to provide funding each year going forward for that amount. As a result, Interior takes that $500,000 amount into consideration in determining the amount to request for each law enforcement program element. Additionally, because the ISDEEA precludes BIA from diverting funds for direct services from one tribe to pay for a 638 contract for another tribe, Interior also takes its current direct service obligations to tribes into account in determining the amount to request for each law enforcement program element. Thus, after Congress provides a lump-sum appropriation, BIA must take into account its current ISDEAA self-governance and 638 contracts as well as direct service obligations and use that information as the basis for distributing its funding for the seven above-mentioned law enforcement program elements.

13. Attachment A is a chart that shows the total TPA funding BIA allocated for each of the federally recognized tribes for the Fiscal Year 2009 appropriation.

14. Attachment B is a chart showing how much funding was allocated for law enforcement for each federally recognized tribe from the Fiscal Year 2009 appropriation. [Attachment B also shows that no funds were allocated for law enforcement for 106 of 109 California tribes.]

I declare under penalty of perjury that the foregoing is true and correct based on information and belief obtained in my official capacity.

GEORGE T. SKIBINE

Executed this 22nd day of July, 2011.

ATTCHMENT B

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOS COYOTES BAND OF CAHUILLA & CUPENO INDIANS, Plaintiff, v. KEN SALAZAR, *et al.*, Defendants.	Case No. 3:10-CV-1448-AJB (NLS) Hon. Anthony J. Battaglia Room: 12 Date & Time: October 14, 2011, 1:30 p.m. **DECLARATION OF DARREN A. CRUZAN SUBMITTED IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT**

I, Darren A. Cruzan, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Deputy Bureau Director of the Office of Justice Services ("OJS"), Bureau of Indian Affairs ("BIA" or "Bureau"). In this position, I have responsibility for the overall management of BIA's law enforcement program. OJS's mission is to serve Indian country by protecting life, safety and property; promoting and maintaining order; preventing crime; and enforcing the law. OJS has seven areas of activity: criminal investigations and police services, detention/corrections, inspection/internal affairs, tribal law enforcement and special initiatives, the United States Indian Police Academy, tribal justice support and

program management. In addition, OJS provides oversight and technical assistance to tribal law enforcement programs. I report directly to the Director of the BIA.

2. Presently, OJS Law Enforcement Operations include six districts with 208 law enforcement programs, 43 of which are BIA-operated and 165 of which are operated by tribes pursuant to the Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA"). In Fiscal Year 2009, OJS funded 191 law enforcement agencies, consisting of 42 BIA-operated agencies and 149 agencies operated by tribes pursuant to the ISDEAA. In addition to funding the 191 law enforcement agencies, OJS provides technical assistance and oversight to tribal law enforcement programs that are operated pursuant to the ISDEAA.

3. OJS understands it must meet its ongoing obligations to fund self-determination contracts for law enforcement pursuant to Title I of the ISDEAA (638 contracts) and self-governance funding agreements pursuant to Title IV of the ISDEAA. BIA transfers law enforcement funds to tribes through 638 contracts. OJS transfers law enforcement funds for self-governance tribes to the Office of Self-Governance, which awards the funds through Title IV funding agreements.

4. OJS allocates funds for law enforcement services based on a number of factors. One factor is high crime. OJS has developed a methodology for allocating new funds to tribes that experience high crime rates or that demonstrate a high-priority need based on (1) reported crimes rates; (2) staffing-level shortages; (3) size of land base; (3) drug/gang activity; (4) detention facility shortages; (5) recorded calls for services resulting in a reportable incident; and (6) operating expenses for new Department of Justice-funded detention facilities.

5. Most states do not have criminal jurisdiction over American Indians on Indian reservations. Therefore, OJS must focus its limited dollars to provide direct law enforcement services to tribes in those states because state law enforcement is not available for Indian tribes in those states. Consequently, either Bureau law enforcement or an ISDEAA agreement is the primary mechanism by which these tribes ensure that criminal law is enforced in Indian country for those states.

6. By contrast, Public Law 93-280 ("Public Law 280") granted some states criminal jurisdiction over American Indians on reservations. Specifically, Public Law 280 gave the states of Alaska (except for the Metlakatla Indian Community on the Annette Island Reserve), California, Minnesota (except for the Red Lake Reservation), Nebraska, Oregon (except for the Warm Springs Reservation), and Wisconsin criminal jurisdiction over American Indians on federal Indian lands and precluded enforcement of the Indian Country Crimes Act and the Major Crimes Act in those same states (with the same exceptions).

7. Although OJS generally does not allocate funds for direct law enforcement services to tribes in Public Law 280 states because the states have been ceded partial jurisdiction over the tribes, a number of tribes have obtained federal funds for law enforcement services for various reasons.

8. In one such instance, some California tribes with tribal lands that overlap into another state, have obtained funding agreements for law enforcement because their tribal lands extend to non-Public Law 280 states. For example, the Quechan Tribe of Ft. Yuma has tribal lands in California, which is a Public Law 280 state, and Arizona, which is a non-Public Law 280 state. Because the tribe has lands in Arizona, the tribe obtained a 638 contract for law enforcement services. A similar situation exists for the Ft. Mojave and Colorado River Tribes because these tribes have tribal lands in both California and Arizona.

9. Some tribes in Public Law 280 states have obtained federal funds for law enforcement purposes for historical reasons because law enforcement funds were included in tribes' Tribal Priority Allocation ("TPA") bases before 1999. For example, the Red Cliff Band of Lake Superior Chippewa Indians located in Wisconsin has a 638 contract for law enforcement services. This tribe obtained a 638 contract before 1999, having exercised its discretion under Tribal Priority Allocation to allocate funds to law enforcement. The exact same is true for the Stockbridge-Munsee Community Tribe, and Lac Du Flambeau Tribe, all located in Wisconsin, and the Lower Sioux Indian Community, located in Minnesota. In 1999-2000, law enforcement funds were removed from tribes' TPA bases.

10. The Hoopa Valley Indian Tribe and the Yurok Indian Tribe in California obtained

ISDEAA agreements for law enforcement services for unique historical reasons. In the mid-1990s, BIA began providing direct law enforcement/natural resources (fisheries) enforcement services for both tribes to assist them in averting violent criminal acts relating to a dispute over fishing rights. Because BIA was providing direct law enforcement/natural resources (fisheries) enforcement to the tribes, both tribes elected to enter into ISDEAA agreements to take over those particular law enforcement functions.

11. Additionally, a number of tribes in Public Law 280 states have entered into agreements with the Secretary pursuant to the Tribal Self-Governance Act. Although OJS does not provide funding for these tribes specifically for law enforcement, the tribes have allocated funds to law enforcement from their Title IV self-governance funding agreements. Leech Lake Band of Ojibwe Indians located in Minnesota, the Oneida Tribe of Indians of Wisconsin, the Siletz Tribe located in Oregon and Montana, and the Manzanita Tribe in California are among these tribes.

12. The Los Coyotes Band of Cahuilla and Cupeno Indians is located in California, a Public Law 280 state. Therefore, OJS has not allocated any funds for direct law enforcement services for the tribe. Of note, Los Coyotes has a land base of over 25,000 acres, contrasted with a small population of 316 members. Because OJS has no statistics on the tribe's crime rates and has no documentation that it is an area of high crime, new funding dollars have not been allocated to the tribe. Furthermore, the tribal lands do not extend to non-Public Law 280 states, nor did the tribe allocate law enforcement dollars in TPA to law enforcement before 1999. Finally, the tribe does not have a demonstrated history of violent criminal acts which required immediate service from OJS. Therefore, the historical reasons why some tribes in Public Law 280 states have received funding do not apply here.

13. However, pursuant to its authority under the Indian Law Enforcement Reform Act, OJS has devoted resources necessary to enter into a deputation agreement with the tribe and has issued Special Law Enforcement Commissions to two of the tribe's police officers. The Bureau currently provides the tribe with $190,787 in annual funding, which the tribe directs toward aid to tribal government and Indian child welfare programs. OJS is aware that

Los Coyotes has exercised its discretion to use approximately $30,000 of its Aid to Tribal Government ("AID") funds in recent years to pay the salary of its Tribal Police Chief.

14. If California were not a Public Law 280 state and because of Los Coyotes' very small population, OJS would likely assign at most a single law enforcement officer to provide direct law enforcement services for the tribe. Moreover, pursuant to OJS' Budget Funding Methodology, it would likely assign this officer and any other law enforcement personnel to cover all of the other tribes in the area. By way of comparison, in Oklahoma where the state law enforcement authorities do not have criminal jurisdiction, OJS has assigned five law enforcement officers to provide direct law enforcement services to six tribes, including the Modoc, Peoria, Seneca Cuyoga, Shawnee, Quapaw, and Ottawa Tribes with a combined population of more than 15,000 members. None of these provide tribal law enforcement officers, despite operating four large casinos and an associated concert venue. Because these five officers provide law enforcement services in separate shifts, there are often only two law enforcement officers on duty to provide direct law enforcement services to the resident populations and visitors to the casinos and concert venue. Likewise, OJS has assigned only three officers to provide direct law enforcement services to four tribes in Nevada (Lovelock Colony in Pershing County and Winnemucca Colony, Ft. McDermitt Indian Reservation and Summit Lake Indian Reservation, all in Humboldt County). To provide coverage to all four reservations, the officers must travel approximately 73 miles between Lovelock and Winnemucca, approximately 74 miles between Winnemucca and Fort McDermitt, approximately 179 miles between Ft. McDermitt and Summit Lake, approximately 167 miles between Winnemucca and Summit Lake and approximately 240 miles between Lovelock and Summit Lake.

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I declare under penalty of perjury that the foregoing is true and correct based on information and belief obtained in my official capacity.

DARREN A. CRUZAN

Executed this 27th day of July, 2011.

ATTCHMENT C

Concurrent Tribal Authority Under Public Law 83-280
Office of Tribal Justice
United States Department of Justice
November 9, 2000

Indian tribes, as sovereigns that pre-exist the federal Union, retain inherent sovereign powers over their members and territory, including the power to exercise criminal jurisdiction over Indians. The Constitution, which allocates powers of government between the state and Federal Governments, vests exclusive authority to address the affairs of Indians in Indian country(1) in the Federal Government. As a result, states lack authority over Indians in Indian country absent congressional authorization. Historically, this meant that the Federal Government and Indian tribes jointly exercised criminal jurisdiction over Indians in Indian country. In 1953, Congress perceived inadequate law enforcement in Indian country and enacted Public Law 83-280 ("P.L. 280") to address the problem. P.L. 280 conferred jurisdiction on certain states over most or all of Indian country within their borders and suspended enforcement of the Major Crimes Act, 18 U.S.C. § 1153, and the General Crimes Act (or Inter-racial Crimes Act), 18 U.S.C. § 1152, in those areas. The statute also authorized other states to assume that jurisdiction. This effort to allow local authorities to address local criminal conditions was not intended to deprive tribal governments of their authority. As a result, the federal government and the vast majority of state and federal courts to consider the issue have agreed that tribes retain concurrent jurisdiction to enforce laws in Indian country. In addition, the Federal Government retains jurisdiction to enforce all federal criminal laws in Indian country except sections 1152 and 1153 of Title 18.

The United States recognizes Indian tribes as "domestic dependent nations," Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831), with retained sovereignty over their members and territory, E.O. 13084, Consultation and Coordination with Indian Tribal Governments (May 14, 1998). Tribes do not draw their powers from any source of federal law. Rather, they are the inherent powers of sovereigns that pre-exist the federal Union. United States v. Wheeler, 435 U.S. 313, 323-24 (1978); Talton v. Mayes, 163 U.S. 376, 384 (1896). Congress has the power to adjust inherent tribal powers, see Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56 (1978), but courts will ordinarily conclude that tribal powers remain intact absent a "clear indication" of congressional intent to limit them, Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 149 (1982); see also Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 18 (1987) ("the proper inference from silence ... is that the sovereign power . . . remains intact"); Rice v. Rehner, 463 U.S. 713, 720 (1983) ("Repeal

by implication of an established tradition of [tribal] immunity or self-governance is disfavored."). Among tribes' inherent powers is the authority "to exercise criminal jurisdiction over all Indians," 25 U.S.C. § 1301(2), and the power to arrest and detain non-Indians and deliver them to state authorities for prosecution under state laws, see Duro v. Reina, 495 U.S. 676, 697 (1990); Strate v. A-1 Contractors, 117S. Ct. 1404, 1414 n.ll (1997); Ortiz-Barraza v. United States, 512 F.2d 1176 (9th Cir. 1975); State v. Schmuck, 121 Wash. 2d 373 (1993).

Under the federalist structure, exclusive authority over Indian affairs is vested in the federal government. See Bryan v. Itasca County, 426 U.S. 373, 376 n.2 (1976). As a result, states lack authority to prosecute Indians for crimes committed within Indian country without congressional authorization. See Seymour v. Superintendent, 368 U.S. 351, 359 (1962). In 1834, Congress first addressed crime in Indian country by enacting the General Crimes Act (also known as the "Inter-racial Crimes Act"), 18 U.S.C. § 1152, which extends federal criminal jurisdiction to crimes between Indians and non-Indians. The General Crimes Act preserved important components of tribal self-government by providing that crimes between Indians remained within the exclusive jurisdiction of tribal governments and by excepting Indian offenders whom the tribal government had tried and punished, ensuring that tribes retained concurrent — indeed, preemptive —jurisdiction over crimes by Indians. And, while states generally retain authority over non-Indians in Indian country, including crimes by non-Indians against non-Indians, the prevailing view is that section 1152 preempts state criminal jurisdiction over non-Indians who commit crimes against Indians. See. e.g., State v. Larsen, 455 N.W.2d 600 (S.D. 1990); State v. Flint, 756 P.2d 324 (Ariz. App. 1988). In 1885, meanwhile, Congress enacted the Major Crimes Act, 18 U.S.C. § 1153, which created federal jurisdiction over certain enumerated serious felonies by Indians(2). Tribes, however, retain their inherent authority to punish Indians for crimes listed in the Major Crimes Act, see Wetsit v. Stafne, 44 F.3d 813 (9th Cir. 1995), although the punishment they may impose is now limited to one-year of imprisonment, 25 U.S.C § 1302(7)(3).

In the early 1950s, Congress perceived a lack of law enforcement and judicial services in many areas of Indian country. See generally Bryan, 426 U.S. at 379-80. That concern became "the central focus" of legislation commonly known as "P.L. 280," id. at 380, which is codified at 18 U.S.C. § 1162. P.L. 280 required six states to assume criminal and civil jurisdiction over all or part of Indian country within those states and provides that the General Crimes Act and the Major Crimes Act shall not apply within those areas of Indian country. See 18 U.S.C. § 1162(a)-(c). P.L. 280 also authorized other states to voluntarily opt to assume criminal and/or civil jurisdiction over Indian country. See generally Washington v. Yakima Indian Nation, 439 U.S. 463 (1979)(4). The Federal Government retains concurrent jurisdiction to prosecute under the Major Crimes Act and General Crimes Act in the so-called "option states." See United States v. High Elk, 902 F.2d 660 (8th Cir. 1990); but see United States v. Burch, 169 F.3d 666 (10th Cir. 1999).

The Supreme Court undertook its most complete analysis of P.L. 280 in Bryan, which involved the question whether P.L. 280 authorized states to exercise civil regulatory and taxation authority over Indians within the covered areas of Indian country. The Court found

that it did not. The Court reasoned that P.L. 280 reflected Congress's concern with the lack of law enforcement and judicial resources for Indian country and meant to allow states to provide those two services only. 426 U.S. at 383-87. Moreover, the Court explained,

nothing in [P.L. 280's] legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to the States should result in the undermining or destruction of such tribal governments as did exist and the conversion of the affected tribes into little more than private, voluntary organizations.

Id. at 388 (quotations omitted). See also Three Affiliated Tribes v. Wold Engineering, 476 U.S. 877 (1986) (same)(5). That two-fold reasoning leads to the conclusion that tribes retain their inherent authority to exercise criminal jurisdiction over Indians. First, extending state criminal jurisdiction to fill a perceived law enforcement void in Indian country does not suggest that tribal law enforcement should be abolished. On the contrary, as one court has noted, eliminating tribal law enforcement authority would have defeated Congress's purpose of enhancing law enforcement services in Indian country. See State v. Schmuck, 121 Wash. 2 d at 396. Second, eliminating tribal law enforcement authority would severely undermine tribal governments. The lack of even a "remoter suggestion]" that Congress meant to "undermine . . . tribal governments" falls far short of the "clear indication" that the Court requires in order to find a limitation on tribal powers in a statute.

That conclusion is reflected in the rulings of courts that have addressed this or related issues. Three courts have squarely addressed whether P.L. 280 divests tribes of concurrent criminal jurisdiction, and all have agreed that it does not. In Walker v. Rushing, 898 F.2d 672 (8th Cir. 1990), the Eighth Circuit explained that

[W]e agree with the district court's conclusion that Public Law 280 did not itself divest Indian tribes of their sovereign power to punish their own members for violations of tribal law. Nothing in the wording of Public Law 280 or its legislative history precludes concurrent tribal authority. As both the Supreme Court and this court have made clear, limitations on an Indian tribe's power to punish its own members must be clearly set forth by Congress. We find no such clear expression of congressional intent in Public Law 280.

898 F.2d at 675 (citations omitted). The Washington Supreme Court in State v. Schmuck. 121 Wash. 2d 373 (1993), and the federal district court for the Central District of California in Cabazon Band of Mission Indians v. Smith. 34 F. Supp. 2d 1195 (C.D. Cal. 1998)(6), reached identical conclusions in cases squarely addressing whether P.L. 280 divested tribes of criminal authority.

Other courts have reached like conclusions in cases involving P.L. 280's effect on tribal civil jurisdiction. For example, the Ninth Circuit in Native Village of Venetie v. Alaska. 944 F.2d 548 (9th Cir. 1991), concluded that P.L. 280 did not divest tribes of concurrent authority to adjudicate child custody proceedings, see id at 560-62. More recently, the Fifth Circuit, relying on Walker v. Rushing, held in TTEA v. Ysleta del Sur Pueblo. 181 F.3d 676 (5th Cir. 1999), that a statute that made P.L. 280 jurisdiction applicable to the Pueblo

did not divest the Pueblo's courts of concurrent jurisdiction over civil disputes that arise within its territory, see id. at 685(7).

The Departments of Justice and Interior, the two federal agencies that deal with law enforcement issues in Indian country, agree that tribes retain concurrent criminal jurisdiction in P.L. 280 states. The Attorney General has testified to that effect before Congress. See S. Hrg. 105-705, 105th Cong., 2d Sess. (June 3, 1998) at 3. The United States has repeatedly taken the position in litigation that P.L. 280 does not divest tribes of concurrent civil litigation, citing among other sources Walker v. Rushing as support for that view. See United States Brief in John v. Baker: Proposed United States Brief as amicus curiae in In re C.R.H. Interior, meanwhile, has stated the view that "it cannot be said that tribal jurisdiction was expressly or by necessary implication withdrawn by" P.L. 280. Sol. Op. M-36907, 85 I.D.433, 436 (Nov. 14, 1978).

Other sources as well concur with the view of the courts and the federal government that tribes retain concurrent criminal jurisdiction over Indians, The most authoritative text on federal Indian law, Felix Cohen's HANDBOOK OF FEDERAL INDIAN LAW (1982 ed.), concludes that

[N]othing in the wording of either the civil or criminal provisions of Public Law 280 or its legislative history precludes concurrent tribal jurisdiction. The basic intent of the criminal law section was to substitute state for federal jurisdiction under the Indian Country Crimes Act and the Major Crimes Act. Thus, if... these two statutes do not preclude concurrent tribal jurisdiction, neither should Public Law 280. The courts have construed Public Law 280 to leave substantial governmental authority with the tribes, holding that the statute should only be interpreted to delegate to the states that jurisdiction which Congress clearly intended to transfer. Like reasoning sustains continuing tribal court authority concurrent with the states.

Id. at 344. Finally, in the legislative history to the Indian Tribal Justice Act, 25 U.S.C. § 3601 et seq., the House Committee on Natural Resources observed that "even in mandatory P.L. 83-280 states, Indian tribes still retain concurrent civil and criminal adjudicatory jurisdiction." H.Rep. No. 103-205, 103d Cong. 1st Sess. (1993) at 9, reprinted at 1993 U.S.C.C.A.N. 2425, 2429.

Aside from tribal authority, it is also clear that the Federal Government retains substantial law enforcement authority in Indian country in P.L. 280 states. Federal criminal laws of general application continue to apply in Indian country areas that are subject to P.L. 280. See United States v. Pemberton. 121 F.3d 1157, 1164 (8th Cir. 1997) (federal mail fraud and conspiracy offenses apply in P.L. 280 states). That includes the offenses - other than sections 1152 and 1153 - that are designed to protect Indian lands or Indian commerce that are set forth in Chapter 53 of Title 18. See Rice v. Rehner, supra (applying the delegation to regulate Indian country liquor transactions in 18 U.S.C. § 1161 to California); United States v. Guassac, 169 F.3d 1188 (9th Cir. 1999) (offense of theft from a tribal organization defined in 18 U.S.C. § 1163 applies in California); United States v. Pollman. 364 F. Supp. 995 (D. Mont. 1973) (offense of unlawful hunting on Indian lands defined in 18 U.S.C. §

1165 applies in P.L. 280 state). Violations of federal criminal laws are investigated by the Federal law enforcement agencies that generally have responsibility over them. That includes the BIA, which generally has authority to enforce federal laws in Indian country. See 25 U.S.C. § 2806(a). The BIA also has authority to commission tribal police officers as "special law enforcement officers" of the BIA to carry out those responsibilities and to contract out its functions under either the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 et seq., or the Self-Governance Program, 25 U.S.C. § 458aa et seq.

CONCLUSION:

Indian tribes retain concurrent criminal jurisdiction over Indians in P.L. 280 states. That is the shared view of the Federal Government and the vast majority of courts that have directly considered the issue.

(1) "Indian country" is defined by 18 U.S.C. sec. 1151 to include all areas within a reservation, trust allotments, and dependent Indian communities. Courts interpret section 1151 to include all lands held in trust for tribes or their members. See United States v. Roberts. 185 F.3d\\25(WhClr.\999).

(2) The Major Crimes are: murder, manslaughter, kidnapping, maiming; felony sexual assault, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against an individual under sixteen years old, arson, burglary, robbery, and felony theft.

(3) Under the "dual sovereignty" exception to the Double Jeopardy Clause, tribes and the Federal Government can punish the same offender for the same offense. See United States y. Wheeler, supra.

(4) Congress enacted various provisions in 1968 to limit the further extension of P.L. 280. The 1968 provisions require tribal consent, by majority vote of the adult members, before any further states could assume jurisdiction over any areas of Indian country and authorize states to "retrocede" P.L. 280 jurisdiction back to the Federal Government. See 25 U.S.C. sees. 1323 & 1326.

(5) In California v. Cabazon Band of Mission Indians 480 U.S. 202 (1987), the Supreme Court explained that P.L. 280 did not authorize California to enforce its gaming laws in Indian country. The Court distinguished between civil/regulatory laws and criminal/prohibitory laws, allowing states to enforce only the latter in Indian country. The distinction between civil/regulatory and criminal/prohibitory laws hinges on whether a state completely forbids conduct or simply regulates how it is undertaken. Because of that distinction, states may not enforce regulatory laws against Indians in Indian country, even though state law might impose a criminal sanction for their violation.

(6) There is an appeal pending in the Cabazon Band case before the Ninth Circuit. That appeal, however, is limited to other issues. More specifically, the district court's

determination that the Band has authority to conduct law enforcement activities within its areas of Indian country is not being appealed and is therefore final.

(7) The Alaska Supreme Court in Native Village of Nenana v. State of Alaska Dept. of Health & Social Services. 722 P.2d 219 (Ak. 1986), held that P.L. 280 divested tribes of jurisdiction to adjudicate child custody matters. In John v. Baker, 982 P.2d 738 (Ak. 1999), however, that court held that tribes retain concurrent jurisdiction to adjudicate child custody matters in areas where P.L. 280 does not apply, meaning areas that are not Indian country. As noted above in text, moreover, the Ninth Circuit disagrees with the result in Nenana. The United States has asked the Alaska Supreme Court to overrule Nenana in a case now before that court. See Proposed United States Brief as amicus curiae in In re C.R.H.. No. S-09677.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Internal Law Enforcement Services Policies

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes internal policies on Cross-Deputation Agreements, Memoranda of Understanding, Memoranda of Agreement, and Special Law Enforcement Commission Deputation Agreements. These policies apply to all Cross-Deputation Agreements, Memoranda of Understanding, Memoranda of Agreement, and Special Law Enforcement Commission Deputation Agreements.

DATES: These policies are effective February 10, 2004.

FOR FURTHER INFORMATION CONTACT: Peter Maybee, Executive Officer, Bureau of Indian Affairs, Law Enforcement Services Washington, DC Liaison Office, 1849 C Street, NW., Washington, DC 20240; Telephone No. (202) 208-4844.

SUPPLEMENTARY INFORMATION: