



# Hopland Band of Pomo Indians

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## INDIAN LAW AND ORDER COMMISSION TESTIMONY

OF

## THE HOPLAND BAND OF POMO INDIANS

FEBRUARY 16, 2012

Chairman Eid and Members of the Law and Order Commission, my name is Leonard R. Powell. I am a Council Member for the Hopland Band of Pomo Indians. On behalf of my tribe, I thank you for this opportunity to share our thoughts and experiences regarding 638 contracts for law enforcement services in California.

### History of our Police Department

The Hopland Band of Pomo Indians ("Tribe") is a federally recognized Indian Tribe organized under a tribal constitution which designates the Hopland Tribal Council as the governing body of the Tribe. We are located in Mendocino County, California. Our reservation encompasses roughly 2,000 acres on which there are over 70 residences that both Indians and non-Indians alike call home. We also own and operate a casino that can see as many as 8,000 guests in a single day. The safety of those who live and visit our reservation has always been one of our highest priorities. Thus, the Tribe established a police department in 1997 and in 2004 sought a Deputation Agreement from the Bureau of Indian Affairs ("BIA"), Office of Justice Services ("OJS") to obtain Special Law Enforcement Commissions ("SLEC") for our officers. OJS denied our request and stated that there was a national moratorium on issuing Deputation Agreements. The Tribe then submitted a 638 contract request for law enforcement

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services and a Deputation Agreement. The contract request did not ask for funding. OJS again denied the Tribe's contract request, but after successful litigation our department obtained its SLEC. The final 638 contract we entered into provided for the cross-deputation of our officers as federal officers, but we do not receive any law enforcement funding through our 638 contract. We were the fourth tribe whose lands are located exclusively within California to have our officers receive SLECs from OJS and the second to do so through a 638 contract.

In many ways, we are pleased about the status of public safety on our reservation. When fully staffed, our police department is composed of seven full-time SLEC officers, including our Police Chief, and one civilian who is the department's administrative assistant. We also have a Tribal Court with a permanent part-time Tribal Court Clerk and a contract Tribal Court Judge. Our SLEC officers always operate as federal officers. They patrol the reservation looking for violations of federal law. If in the course of enforcing federal law an officer sees violations of state or tribal law, he makes arrests for those violations as a federal officer, enforcing state law as a federal officer under California Penal Code ("PC") §830.8(a) and enforcing tribal law as a federal officer under the Tribe's Deputation Agreement which allows our SLEC officers to enforce tribal law as well as federal law. Because of our Deputation Agreement and PC § 830.8(a) our officers do not have to worry about whether they are on or off trust land within the reservation or whether the people committing crimes are Indian or non-Indian. They just make arrests and then cite the people pursuant to the appropriate legal authority.

We have a very strong relationship with the law enforcement agencies of Mendocino County, which is key to our police department's success. Because of this strong relationship, we have entered into a direct filing Memorandum of Understanding ("MOU") with the

Mendocino County District Attorney's Office and a direct jailing or "booking" MOU with the Mendocino County Sheriff's Office. These MOUs, in combination with the ability of our officers to exercise state peace officer powers under the authority granted to them by PC §830.8(a), allow our officers to respond and act without hesitation whenever they have probable cause to believe that a public offense that is a violation of California law and which involves immediate danger to persons or property has just occurred or is being committed. In addition to these filing and jailing MOUs, the Mendocino County Sheriff has entered into a Mutual Aid Agreement with the Tribe that allows our department to access the California Law Enforcement Mutual Aid Radio System ("CLEMARS"), ensuring our officers can communicate with state and county agencies during dire emergencies when officer and citizen safety trump all other considerations.

Our partnerships with the federal government are also important to our public safety efforts. A great example of this is that once every two months Federal Magistrate Nandor J. Vardas holds Central Violation Bureau hearings on our reservation. These hearings facilitate the prosecution of federal misdemeanor crimes that occur not just on our reservation but also on other federal lands throughout our region and save our department and other federal agencies valuable travel costs and time. As a result of this cooperation with the federal and Mendocino County governments and our officers' diligent efforts, crime on the reservation reached an all time low last year. In fact, based on the crime statistics our reservation is currently one of the safest locations in all of Mendocino County.

We share all this information with the Commission in the hope that the Commission will understand that tribal law enforcement in California is necessary and can work very effectively. However, we do not want the Commission to mistakenly believe our success means that there

is not a need for tribal law enforcement funding in California, that Public Law 280 is working, and that all is currently well here in California Indian Country or even just on our reservation. We still face daily struggles that threaten to erode all of the progress we have made. Lack of steady federal, state, and tribal funding always means that we could be forced to reduce the size of our department, and because our department is so small, even the loss of one officer creates gaps in law enforcement coverage and has a dramatic impact on officer response time. Because county and city law enforcement agencies can offer far superior benefits, they are able to constantly recruit the Tribe's most qualified officers, depleting our department's institutional memory and forcing us to spend time and resources recruiting and training new officers. Most worrisome, there is always the chance that one day new Mendocino County officials who do not wish to cooperate with us will be elected, causing our department to lose critical MOUs and other important tools. With this in mind, we hope the Commission will seriously consider recommending the following federal administrative and legislative changes which, if enacted, would mitigate or eliminate altogether the challenges we have identified.

### **Recommendations**

To begin, we are excited about the changes that are already happening because of the Tribal Law and Order Act. We plan to submit our request to the Attorney General for the assumption of concurrent federal criminal jurisdiction very soon. This will lead to more efficient administration of justice because prosecutors will be able to choose to utilize federal court instead of state court when doing so makes sense. Further, we believe that SLEC officers should be investigating federal crimes first and foremost. The reality is that the types of crimes that occur most frequently on our reservation have required our officers to rely heavily on PC

§ 830.8(a), a reliance which, although effective, has not been ideal. One reason this reliance is not ideal is that although we believe our officers are protected by the Federal Tort Claims Act when making PC § 830.8(a) arrests, we know that some do not agree with our position. Increasing the number of federal crimes that our officers can investigate increases their certainty of liability protection, liability protection they must trust when they are in the field. Finally, assumption will empower our department in one other way. Assumption will reduce our dependence on the cooperativeness of county officials. Even though we hope to always maintain our strong relationship with the Mendocino County government, should that relationship deteriorate, assumption will mean that the Sheriff can not seriously impede our officers' ability to take the worst criminals out of our community and put them behind bars.

In addition to our optimism about assumption of concurrent federal jurisdiction, we are encouraged to hear that OJS plans to apply for access to the California Law Enforcement Telecommunications System ("CLETS") for all SLEC agencies in the state. Once our department has access to CLETS, our officers will have the same information and investigative technology as every state police agency, but until this happens our officers are putting their lives in danger needlessly. They cannot run criminal history checks on vehicle license plates and driver's licenses in the field, so when one of our officers makes what he thinks is a routine stop he cannot determine if the car he just stopped and is approaching was just used, for example, in a bank robbery and has a driver who is armed and dangerous. Failure on the behalf of OJS to file this application for CLETS in a timely manner so that our officers can have access to this vital information as soon as possible would be simply irresponsible.

Now even though the federal government has taken some steps in the right direction, there is a lot more that can be done to equip SLEC officers. Congress should pass legislation

mandating that all states give all federal law enforcement agencies operating within their boundaries access to both their state criminal history databases, in the office and in the field, and to their state law enforcement communication systems. As we have already stated, we have access to CLEMARS currently, but Mendocino County is one of only three counties that have entered into Mutual Aid Agreements with SLEC agencies. Access to these essential law enforcement systems should no longer be determined by state and local governments' willingness, and more often unwillingness, to acknowledge the professionalism and authority of tribal law enforcement. In the United States today, Indian Country is the only place where this occurs. Thus, any legislation mandating federal agency access to these state systems should also unequivocally state that SLEC agencies are federal agencies for all intents and purposes, including liability under the Federal Tort Claims Act. In addition to these legislative changes, the BIA needs to establish two or three regional dispatch centers for SLEC agencies in California. The cost for each SLEC agency to maintain professional twenty four-hour dispatch is prohibitive, and having regional dispatch would be nearly as effective as having dispatch for each department. These are simple changes that will provide our officers the tools that most law enforcement professionals will tell you are mandatory if officers are to police safely and effectively.

Ultimately, the tools that our officers have will not matter if we do not have officers who can competently use them. In the last two years we have lost four officers, which is more than 50% of our entire department when it is fully staffed, to sheriff's offices and other police departments. These four officers were among our best. We think the fact that our officers are in such high demand speaks well to the quality of our officers and the experience they gain while working for our department. However, we cannot afford to continually be a recruitment

pool for nearby local and state agencies. Each time that one of our officers is hired elsewhere, it means that we have to spend time interviewing new applicants and spend funding on applicant background checks and new officer training. Additionally, from the moment an officer leaves until a new hire completes his ten week training period with an experienced officer, our department has to reduce the number of shifts that it can cover. After a new officer completes his training, he must still spend months or even years getting to know the community before he can truly be as effective as the officer he replaced. During this rough economic time and period of state and local government spending reductions, we have been able to recruit very qualified officers. If changes are not made to help us recruit and retain our officers, we fear this may not be the case when the economy has recovered.

There are several reasons that officers almost never spend more than five years with our department. The first and foremost reason is that our department cannot offer competitive benefit packages. Even if an officer does not want to leave for a nearby sheriff's office or city police department, he can only justify working for us for so long before he realizes that in the long term he needs health insurance that covers his family, life insurance that will ensure his family's security if the worst should happen in his dangerous line of work, and a retirement plan that is better than a 401K which will probably force him to work until he reaches at least sixty-five years old. To address this problem, at a bare minimum SLEC officers must be allowed to join the Federal Employees Retirement System ("FERS"). This goes hand in hand with our request that all SLEC agencies be recognized as federal agencies, for all employees of federal agencies should have the same minimum benefits.

Our department's inability to be a Peace Officer Standards and Training ("POST") certified agency is another factor that makes recruiting new officers difficult. An applicant

becomes hesitant when he learns that after at most six years working for our department he will lose his California POST certification completely and be forced to go through a basic training academy again, which takes sixteen weeks, if he ever wants to work for almost any other law enforcement agency in California. We know that the BIA is currently working on a bridge that will grant SLEC agencies the equivalent of federal POST certification, and that this will keep SLEC officers' California POST certification active. This effort should be pursued with great haste, and if it fails then other solutions must be identified.

The last issue that affects our department's ability to retain officers is the nature of our grant funding. We know that the Commission is aware of the *Los Coyotes Salazar et.al* case and the position that the BIA has taken regarding funding for California tribes in the past. The Commission may also be aware that we have brought our own litigation regarding 638 funding for law enforcement. Thus, we do not wish to dwell on the subject except to say that Congress needs to pass legislation mandating that California tribes be eligible to compete for law enforcement funds appropriated by Congress. Instead, we would like to discuss the hardships we experience because of the way that Department of Justice ("DOJ") grants we have received and currently receive are structured.

Sometimes the grants we receive from the DOJ specifically require that we hire a new officer. We respect that these DOJ grants are intended to be seed money that helps us establish new programs, but we feel this new officer requirement is always counterproductive. We have had to replace experienced officers upon receiving these types of grants, often because the experienced officers were themselves hired through grants and we have no sustained funding to cover the cost of employing them. The DOJ should continue to provide us



funding that we can use to start up new programs, but the DOJ needs to recognize that experienced officers are just as, if not more, qualified to run new programs as new officers are.

If and when the DOJ and other federal departments consider changes to the structure of some of the grants they provide to SLEC agencies, the departments should know that their grants could be turned into a powerful method for improving the relationships between SLEC agencies and their local county governments. We have a \$300,000 DOJ Meth Outreach grant that we applied for jointly with the Mendocino County Sheriff's Office. Because of this grant, the Sheriff's Office has been able to, among other things, hire an additional civilian employee. This kind of partnership makes Mendocino County's Sheriff one of our department's biggest fans, which is important since, absent a drastic change to Public Law 280, the level of success a SLEC agency can achieve here in California will always depend on its current relationship with its local county government. We anticipate that most if not all county governments who share responsibility for criminal jurisdiction in California Indian Country will embrace access to federal funding that only exists because of the federal government's trust responsibility to tribes. Thus, structuring grants to encourage cooperation between county and SLEC agencies will not only achieve the outcomes that the grants are targeted at but also create new opportunities for SLEC agencies that we cannot anticipate. However, any funding that goes to counties must be in addition to and not at the expense of the very limited funding that is currently going to SLEC agencies in California. If not, the loss of funding will outweigh the benefits gained from the counties' goodwill.

Finally, we would be remiss if we did not take this opportunity to say a few words about Tribal Courts, for a SLEC Police Department works best when it works with a Tribal Court. For example, one of the main ways that a police officer will prevent crime is by stopping vehicles

for traffic violations, because sometimes these routine traffic stops enable an officer to discover weapons and drugs before they are used or sold. In California Indian Country, of course, only tribes have the ability to pass laws regulating most traffic activity within their borders because under California law most traffic violations are regulatory and not criminal. Thus, under current law a SLEC department in California cannot prevent crime this way without a Tribal Court. Some might argue that the best way to give SLEC officers in California the ability to make traffic stops is to grant jurisdiction over traffic violations on reservations in California to the state or federal government; however, history has shown that diminishing tribal sovereignty is never an effective way to combat problems in Indian Country. What SLEC officers need are capable and stable Tribal Courts.

There are currently two main obstacles that prevent SLEC officers in California from having this. The first is funding. Many tribes in California, including us, recognize that running their own Tribal Courts does not make financial sense and want to start regional Tribal Court Consortia. Unfortunately, these same tribes often cannot afford to sustain the existence of regional Tribal Court Consortia either. The federal government should promise sustained funding for regional Tribal Court Consortia in California, and this funding should be in addition to the very small amount of Tribal Court funding that is currently provided because no tribe should be penalized for exercising its sovereign right to have its own Tribal Court. The second obstacle is the ability of Tribal Courts to enforce their orders. If a non-Indian fails to pay a speeding ticket, the only recourse a Tribal Court currently has is to use a collection agency. Congress should pass legislation mandating that Tribal Courts have the same access to state DMV enforcement mechanisms that federal courts have. Without this access and the ability to

collect revenues that comes with it, Tribal Courts are neutered and SLEC agencies cannot consistently police the roads in California Indian Country.

### **Conclusion**

We are optimistic about the future. Every indication is that the federal government has begun to recognize that tribal law enforcement in California is the most effective way to increase public safety on reservations. Steps are already being taken to increase the effectiveness of SLEC police departments, and there are many more changes that can be made. However, if the federal government refuses to provide the tools our officers need and the recognition and compensation our officers deserve, then the federal government will be continuing to fail to meet its obligations to us. Above all, tribes need consistent and continuous law enforcement funding through the 638 contracting process to remain effective. We hope that the Commission's taking the time to hear about and learn from our experiences is an indication that the federal government is committed to a strong partnership and the safety of those who live on and visit our reservation. Thank you.