

# *San Manuel Band of Mission Indians*

October 30, 2017

Elizabeth Appel, Director  
Office of Regulatory Affairs & Collaborative Action  
Bureau of Indian Affairs  
U.S. Department of the Interior  
1849 C Street, NW, Mailstop 3642-MIB  
Washington, DC 20240

**Re: BIA-2016-0007 – San Manuel Band of Mission Indians Recommends Modernizing Indian Trader Regulations (25 CFR 140)**

Dear Ms. Appel:

The San Manuel Band of Mission Indians (“San Manuel”) is pleased to offer these comments in support of the Department of the Interior’s efforts to modernize the Department’s Indian Trader Regulations at 25 C.F.R. Part 140. We believe modernizing the regulations to fully reflect Congress’ policy of Indian self-determination is in the best interest of Indian Tribes and the Department as trustee, and will provide more certainty to tribal governments, states, and local counties regarding commerce in Indian country.

## **Background – San Manuel Band of Mission Indians**

San Manuel is a federally-recognized Indian Tribe with its reservation lands located in San Bernardino County. The people of San Manuel call themselves the Yuhaaviatam, which means “People of the Pines.” The Yuhaaviatam is one of several clans of the greater Serrano Indian Nation.

The San Manuel Indian Reservation was established by Presidential Executive Order in 1891, with a small land area of one square mile (640 acres) along the steep foothills of the San Bernardino Mountains. The Reservation today continues to be a small remnant of the once vast aboriginal lands of the greater Serrano Indian Nation, which includes much of the western portion of present-day San Bernardino, eastern Los Angeles, and a smaller portion of southeastern Kern Counties in southern California and encompasses more than 11,000 square miles.

As a sovereign government, San Manuel serves both the Reservation community as well as the surrounding communities through the San Manuel Fire Department, the San Manuel Department of Public Safety, the San Manuel Environmental Department, and others. In addition, the Tribe owns the San Manuel Casino and a number of other successful business enterprises that generate revenues to fund these programs and services.

## **Indian Trader Regulations**

The first efforts to establish a system to regulate trade with Indians was initiated with the Trade and Intercourse Act of 1790. That same year, the first Indian trader regulations were adopted, requiring among other things that the Superintendents license traders, that only U.S. citizens are allowed to be licensed to trade with Indians, and Indian traders are required to provide intelligence to the Superintendent of any “hostile designs with the Indians.” The current Indian trader regulations at 25 CFR 140, which largely follows the regulations adopted in 1790, were last updated in 1957 – over sixty (60) years ago!

As you are aware, significant new enhancements in tribal self-governance and tribal economic self-sufficiency have increased the capability and expanded the capacity of tribes on a number of fronts, including the ability to regulate commerce on their respective reservations since 1957 when the Indian Trader regulations were last updated. Tribal governments have ushered in significant growth and progress on Indian reservations with new jobs and increased business activity particularly over the past 30 years with the advent of tribal government gaming. Over that time, tribes have proven themselves to be sophisticated in their approach to business and commerce as well as their exercise of governance authorities. Today, tribes are fully capable of effectively regulating trade and commerce in Indian Country.

## **Specific Areas of Interest in Indian Trader Regulations**

San Manuel specifically recommends that the Department modernize the Indian Trader Regulations by making the following changes:

### **1. Clarify that tribes have the authority to license businesses on the reservation.**

The authority to license a business enterprise to conduct business on the reservation should be the exclusive authority of the tribal government with jurisdiction over that Indian reservation. An example of this problem is the litigation regarding the Tulalip Tribes’ Quil Ceda Village retail area, where Snohomish county and Washington state continue to tax purchases and business transactions of non-Native Americans on tribal land.

### **2. Clarify that Tribal courts have jurisdiction for business transactions on the reservation.**

A tribal government, including its tribal judiciary, should have civil jurisdiction over business relationships and transactions that occur on the reservation between the tribal government and the non-Indian businesses. Over the years, tribal governments have worked in earnest to create tribal court systems and enhance their capacities so they are fully capable of adjudicating conflicts that might arise from business transactions on the reservation.

### **3. Affirm tribal government authority to tax on the reservation.**

The Department is authorized to address dual taxation, an issue that has handicapped tribal governments through a series of common law decisions made which allow state governments to intrude on tribes' sovereign tax base. Addressing dual taxation is extremely important and further justified since state governments provide few services on Indian reservations, but impose taxes on natural resources, retail sales, and personal property (*e.g.* wind energy-generating facilities). In addition, if tribal governments impose a tax, the resulting dual taxation drives business away. If tribes collect *no* taxes, they suffer inadequate roads, schools, police, courts and health care. Dual taxation effectively undermines the Constitution's promise of respect for tribal sovereignty, and keeps Indian reservations the most underserved communities in the nation.

For these reasons, we support modernized Indian Trader Regulations at 25 C.F.R. Part 140 which declare:

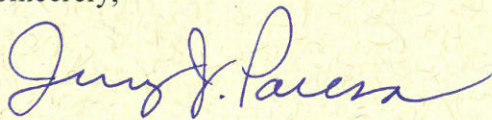
- 1) "Any person or business desiring to trade with the Indians on any Indian reservation shall be permitted to do so under the laws of the tribal government."
- 2) "Trade and business activity on trust or restricted fee lands is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision."

### **Conclusion**

Tribal governments are taking on increasing levels of government responsibility but receive inadequate federal funding for roads, schools, police and all government services. Through its proposal to modernize the Indian Trader Regulations, the Department has an opportunity to end centuries of dishonorable commercial dealings, fulfill trust responsibilities, and create a revenue base for tribal governments.

In addition, tax, regulatory, and service agreements with states and local governments would be encouraged but not required. For all of the aforementioned reasons, the Department should take the next step. Initiating a regulatory process will send a strong message to states and local governments that they must deal fairly on taxes and services. If you have any questions or concerns, please contact our Director of Intergovernmental Affairs, Alva Johnson. He can be reached at 909-864-8933, or by email at [AJohnson@sanmanuel-nsn.gov](mailto:AJohnson@sanmanuel-nsn.gov).

Sincerely,



Jerry Paresa  
Chief Executive Officer  
San Manuel Band of Mission Indians