

**From:** Allen Fetter <allenhfetter@gmail.com>  
**Sent:** Tuesday, November 2, 2021 2:51 PM  
**To:** NRC-EJReview Resource  
**Subject:** [External\_Sender] Fwd: FW: Santa Ynez Chumash Policy Comments  
**Attachments:** SYChumash.EJ.POLICY.Comments.10-29-21.pdf

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**From:** Allison McAdams <[amcadams@santaynezchumash.org](mailto:amcadams@santaynezchumash.org)>  
**Sent:** Monday, November 1, 2021 7:26 PM  
**To:** Talley, Sandra <[Sandra.Talley@nrc.gov](mailto:Sandra.Talley@nrc.gov)>  
**Cc:** Heath, Maurice <[Maurice.Heath@nrc.gov](mailto:Maurice.Heath@nrc.gov)>  
**Subject:** [External\_Sender] Santa Ynez Chumash Policy Comments

Good evening, Ms. Talley,

Please find a comment letter from the Santa Ynez Band of Chumash Indians attached. A physical version of this letter has been sent via FedEx to the address listed and should arrive tomorrow afternoon.

Thank you for your time.

Sincerely,

**Allison McAdams**

Executive Assistant | Legal Department

Santa Ynez Band of Chumash Indians

P.O. Box 517, Santa Ynez, CA

*Office:* (805) 688-7997

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# SANTA YNEZ BAND OF CHUMASH INDIANS

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September 29, 2021

Sandra T. Talley  
Senior Liaison Project Manager  
NMSS  
Nuclear Regulatory Commission  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
[Sandra.Talley@nrc.gov](mailto:Sandra.Talley@nrc.gov)

RE: Policy Statement on the Treatment of Environmental Justice ("EJ") Matters  
in NRC Regulatory and Licensing Actions (the "EJ Policy")

Dear Ms. Talley:

The Santa Ynez Band of Chumash Indians ("Chumash" or "Tribe") thanks you and the Nuclear Regulatory Commission for your efforts to date in complying with Executive Order 12898 as reaffirmed by President Biden's Executive Orders.

The Santa Ynez Indian Reservation is located 75 miles south of the Diablo Canyon Nuclear Power Plant near Avila Beach, California and 196 miles north of the San Onofre Nuclear Power Plant between Los Angeles and San Diego, California. In addition the Chumash are less than 100 miles northeast from the Santa Susana Sodium Reactor Experimental (SRE) which was a small sodium-cooled experimental reactor built by Southern California Edison and Atomics International at the Santa Susana Field Laboratory, near Moorpark in Ventura County. SRE has since been dismantled after a reactor incident and the entire Santa Susana Field Laboratory has been declared excess federal property by the General Services Administration.

We have reviewed the U.S. Nuclear Regulatory Commission, "EJ Policy," and have the following preliminary comments:

## Aboriginal Chumash Bands

We would first like to provide a brief historical overview of the Santa Ynez Band of Chumash Indians here in the State of California.

The Chumash historically occupied an area from Paso Robles/Morro Bay to the north, Malibu to the south, Tejon Pass to the east (what is now called the "Grapevine") and the four Northern Channel Islands. In prehistoric times the Chumash territory encompassed some 7000square miles. Today, this same region in Southern Central California takes in five counties including Santa Barbara, Ventura, San Luis Obispo, Los Angeles, and Kern. An elaborate Chumash trail network linked several hundred early Chumash villages and

towns, seasonal encampments, rock art sites, shrines, gathering places and water sources.

These trails were vital to sustaining cultural longevity for over 8,000 years in this region as they formed the foundation for economic and social exchange among the Chumash.

The Chumash numbered over 25, 000 people on the eve of the first Spanish land expedition in 1769. This scouting trip by Portolá led to the founding of five Catholic missions in the Chumash territory beginning in 1772; with Mission Santa Inés the last to be built in 1804.

In a period of seven decades, the once thriving population of 25,000 Chumash drastically declined to 1,200 people. After secularization of the missions in 1833, the Chumash population in the Santa Ynez River area alone, including today's Lake Cachuma, Mission Santa Inés, Mission La Purísima Concepción and the Lompoc Coast, severely declined to only 455 Indians. A map of Chumash Towns at the Time of European Settlement is attached.

### The Treaty of Guadalupe Hidalgo

In the aftermath of the Mexican-American War in 1848, the United States acquired the California territory as part of the Treaty of Guadalupe Hidalgo. An interesting aspect of the Treaty was that the United States agreed to respect the land claims and rights of the Native Americans already living in California on the land they physically occupied.

### The 18 Unratified California Treaties

Indian Commissioners were sent to California to remove the California Native Americans from the lands they "physically occupied" and create the first reservations. In reliance on the Treaties, the California Indians abandoned much of their aboriginal lands and began withdrawing to their new treaty lands. However, unbeknownst to the California Tribes, the California delegation in Congress was busy lobbying against ratifying the Treaties. Instead of just not ratifying the Treaties, Congress went one step further. By secret joint resolution, Congress agreed not to ratify the California Treaties and to formally "hide" them for 50 years. The net effect of this deception was to open up California for settlement, as the Native Americans were no longer physically occupying the land and yet give the Tribes no reciprocal rights to any reservations whatsoever.

Between April 29, 1851 and August 22, 1852, a series of eighteen treaties "of friendship and peace" were negotiated with a large number of what were said to be "tribes" of California Indians by three treaty Commissioners (George W. Barbour, Redick McKee and O. M. Wozencraft) whose appointments by President Millard Fillmore were authorized by the U.S. Senate on July 8, 1850. Eighteen treaties were made but the Senate on July 8, 1852 refused to ratify them in executive session and ordered them filed under an injunction of secrecy. The texts of these 18 unratified treaties were made public on January 19, 1905 at the order of the U. S. Senate which met in executive session on that day in the Thirty-second Congress, First Session.

### The Santa Ynez Indian Reservation

Chumash Reservation life began with the Spanish Missions who claimed to be "teaching" tribal members religion while allowing tribal members to perform manual labor to build their character. So much character was built that a once vibrant population of Chumash in the Santa Ynez River area was reduced from 3,000 to a few hundred in a space of 74 years.

With the secularization of the Missions and California Statehood, even these few Chumash found they had lost their homelands and were living in the shadows of the former glory of the Missions. The Chumash of the Village of Kalawashaq, from where many of today's tribal members descend, found refuge in the Zanja de Cota riverbed near the town of Santa Ynez—mostly because no one else wanted to live in that flood plain.

From the beginnings of California Statehood, the Catholic Church had maintained that many Church lands were jointly owned by the Church and its neophytes, which is how the Church referred to its Chumash workers in residence. In a quiet title action beginning in 1897, the Catholic Bishop of Monterey began the process to eliminate any neophyte claims to about 11,500 acres of the Canada de los Pinos or College Rancho owned by the Church and to transfer title to the Zanja de Cota Riverbed to the Indian Agent of the action, and by the implementation of the Mission Indian Act of 1891 and an Executive Order from President Benjamin Harrison, the Zanja de Cota riverbed was turned into the Santa Ynez Indian Reservation of the Santa Ynez Band of Chumash Indians. A sketch of Legal Description of two parcels in Notice of Pendency of Action, The Roman Catholic Bishop of Monterey, Plaintiff, against Salomon Cota, et al., filed 2/23/1897; Superior Court of the County of Santa Barbara, CA.

Such Santa Ynez Reservation consisted of about 99 acres--a far cry from the 7,000 square miles of aboriginal Chumash lands prior to the Missions or even the 11,500 acres of Church lands over which the Chumash shared with the Catholic Church by land claim.

#### The Indian Reorganization Act of 1934 and Lost Tribal Lands

The Indian Reorganization Act of 1934, the so-called Wheeler-Howard act, was designed with two objectives. The first was to reverse the effects of the Dawes Act of 1887 and end the era of allotment and forced assimilation by creating strong tribal governments on established federal reservations.

The second objective was to reverse the loss of tribal lands and, if possible, re-establish the aboriginal territories of many tribes.

Currently the Chumash and other tribes throughout the United States go through the indignity of having to buy back their aboriginal territories a piece at a time.

#### Comment: the EJ Policy cannot focus solely on distance from existing Reservations

The history of federally recognized tribes is one of resettlement from their historic homelands (sometimes referred to as aboriginal territories) and a constant diminishment of tribal lands.

While the Santa Ynez Reservation is currently 75 miles south of the Diablo Canyon nuclear power plant, the historic territory of the Chumash people not only includes the Diablo Canyon plant but even extends north beyond it to Paso Robles/Morro Bay.

#### Comment: The NRC needs to look beyond only Federally Recognized tribes

While we understand the NRC is a federal agency, the NRC must understand that there is a rich diversity of tribal governments in the United States, only a portion of which are federally recognized.

Researching non-federally recognized tribes may be additional work for the NRC but is still necessary to fully represent all of Indian Country.

In the State of California, the NRC needs to contact the California Native American Heritage Commission (NAHC). The NAHC maintains lists of tribal sacred sites in its sacred lands files. In addition, the NAHC maintains a lists of tribal contacts for purposes of complying with the California Environmental Quality Act (CEQA), Senate Bill 18 and Assembly Bill 52 which created a list of "California Native American Tribes."

Comment: the NRC cannot focus solely on Treaties

The story of tribes in California is about the 18 unratified treaties between the federal government and California tribes. Unlike tribes with ratified treaties, California tribes were established in a variety of different way such as Executive Orders, litigation, and Acts of Congress.

Specific Sections of the EJ Policy

P. 3, I. Background—This EJ Policy is NOT about E.O. 12898; it is about the new Executive Orders by President Biden tasking the NRC with reviewing its EJ policies. Please identify and address these Biden E.O.s.

P. 21, E. Environmental Assessments (EA)—NEPA is a process that may end in a Finding of No Significant Impact (also called a "FONSI"). To the extent an agency issues a FONSI, that is a conclusion that there are no significant unmitigated environmental effects, including no EJ impacts. However, it is not technically correct that just because a FONSI is issued that EJ impacts have not been analyzed. Instead, EJ needs to be analyzed as part of the NEPA process in achieving a FONSI.

P. 23, F. Generic/Programmatic EISs—Every Generic and Programmatic EIS should contain a statement that any project specific NEPA compliance work, either EA or EIS, shall analyze EJ impacts.

P. 29, Environmental Assessments Do Not Normally Include Environmental Justice Analysis; and

P. 33, Guidelines as to EAs--See P. 21 EA comments above.

p. 34, Guidelines for Generic or Programmatic EISs—see P. 23 Generic/Programmatic comments above.

Thank you for the opportunity to comment on the EJ Policy. To the extent we develop additional comments we reserve the right to supplement this letter at a later date.

Sincerely,

Sam Cohen  
Government and Legal Specialist  
Santa Ynez Band of Chumash Indians

CC: Heath, Maurice <[Maurice.Heath@nrc.gov](mailto:Maurice.Heath@nrc.gov)>