

# Rincon Band of Luiseño Indians



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## Statement of Bo Mazzetti Chairman of the Rincon Band of Luiseno Indians

September 29, 2010

### **Rincon Tribal Security Initiates 30 Day Blockade of Fee Land Owned by Marvin Donius**

Year's past, reservations were considered by some as good places to avoid any form of regulation or law enforcement. Buying cheap land on reservations was a way for those who wanted to avoid city or county zoning codes and ordinances. Historically, tribal communities have not had the resources to assert our jurisdiction and have often found ourselves stuck with property owners, who believe themselves free to do as they wish with their property, even when it is creating health and safety hazards. Today, many tribes are no longer poor and do not have to accept these situations. Plus, as tribes have been able to fund viable governments, police, fire, and environmental departments, there has been increased recognition of tribal jurisdiction.

In the case of the Rincon Tribe securing the entrance to the property known locally as the mushroom farm, which is owned by a non-Indian, and considered fee land, the Rincon Tribe, a sovereign government, has won several recent court battles, bringing clarification to an issue which has been a source of conflict between the tribes and non-Indian land owners. The property owners have defied Rincon's jurisdiction to regulate activities on the land to protect the health safety and welfare of Tribal members and Reservation residents, and protect the Tribe's economic interest.

The Intertribal Court of Southern California, after many notices and warnings to Marvin Donius, the title owner of the property, issued an order for a preliminary injunction on September 27, 2010, that prevents any new development on the property until the owner obtains necessary approvals of the Tribal government pursuant to Tribal law. Additionally, the injunction gives Donius 30 days, to vacate all residents from the 5-acre property. Rincon Tribal Security was ordered by the Judge to secure the property. Currently, Rincon Tribal Security has closed the property to any incoming deliveries, except access to the residents, and removal of items currently on the property.

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**Bo Mazzetti**

**Stephanie Spencer**

**Charlie Kolb**

**Steve Stallings**

**Kenneth Kolb**

Chairman

Vice-Chairwoman

Council Member

Council Member

Council Member

After a two-year legal battle, the most recent order brings an abrupt end to Mr. Donius' defiance of tribal law and jurisdiction. Donius, together with the lien holders of the property have argued twice to California State Court, and twice to federal court, that he be allowed to avoid and ignore Tribal Court. The last of the State Court actions was dismissed earlier this year. On September 21, 2010, both of the federal lawsuits brought by Donius' were dismissed. All four state and federal court decisions noted the Tribe's right to regulate activities to protect the Tribe against the rages of wildfires and protect its water supply from contamination. All four-court decisions directed Donius and his lawyers to pursue remedies in the Tribal Court. In the case of the federal lawsuits, the Court ruled it will not entertain his claims unless he exhausts his tribal court remedies, which he refuses to do. Despite these four decisions, Mr. Donius continues to refuse to acknowledge the jurisdiction of the Tribal government and the Tribal Court, and he has appealed his latest court losses to the Ninth Circuit. Prior to September 27, Donius defiantly ignored the Rincon Tribal Government's laws with impunity. Now that has all changed dramatically. In this no man's land of regulatory responsibility, when Donius ignored communications from the Tribal Council, we exerted our jurisdictional authority through legal mean.

## **Background**

The property was purchased under the Allotment Act from a tribal member and has not been a mushroom farm for many years. When the property changed hands to Marvin Donius, it was converted to a business of storing and stripping recreational and other salvage operations. Donius refused to comply with the Rincon's Environmental Ordinance necessary to protect the land and vulnerable ground water supply.

Tribal law requires that anyone seeking any new development within the Reservation boundaries, submit a detailed plan to be approved by the Tribal Council that demonstrates how the development will be done in a manner that adequately protects the interests of the Tribe and its membership. The Rincon Band relies on wells and pumping ground water from our aquifer and has no access to publicly transferred water. So keeping our groundwater clean, uncontaminated, and high water table free of pollutants is a matter of survival.

The Rincon Band is in area famously prone to wildfires. Exerting its regulatory jurisdiction over activities on the mushroom farm is only part of the Tribe's concerted on-going efforts of the Tribe to reduce the risk and minimize the damage from wildfires. The Poomacha Fire of 2007, spreading through property increased the fire danger from exploding canisters, and other stored items that blasted in all directions, spewing fireballs directly at the tribe's gaming facility and endangering lives.

After the fire, when the extent of the storage of hazardous materials were known the tribe asked for a restoration plan that complied with the Rincon Environmental Ordinance. Donius refused repeated attempts by the tribe to work with him or acknowledge his business represented a health and safety hazard. Even after FEMA forced him to remove tons of contaminated dirt from his property, Donius claims he has done nothing wrong and the tribe does not have jurisdiction. The current legal battles started when Donius sued SDG&E in State Court for failure to re-energize the property after the Poomacha wildfire. SDG&E refused service because Donius had failed to secure a proper permit from the Tribe.