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April 16, 2002

TO: ALL CALIFORNIA DISTRICT ATTORNEYS, SHERIFFS AND CHIEFS OF POLICE:

Re: Impact of Bishop Paiute v. County of Inyo

This letter is intended to provide guidance regarding enforcement of California's criminal laws on tribal lands in light of the recent decision of the United States Court of Appeals for the Ninth Circuit in *Bishop Paiute v. County of Inyo* (2002) 275 F.3d 893. Public Law 280 (18 U.S.C. § 1162) grants California jurisdiction over offenses committed by or against Native Americans in Indian country and specifies that the state's criminal laws have the same force and effect on tribal lands as they do elsewhere in the state. In *Bishop Paiute*, the Ninth Circuit found that tribal sovereignty limits criminal law enforcement under Public Law 280, with regard to search warrants seeking to obtain "uniquely tribal property" from a tribe. Specifically, search warrants to obtain tribal casino employment records in the course of a welfare fraud investigation were found to be an improper exercise of Public Law 280 jurisdiction.

Representatives of several law enforcement agencies have expressed concerns over the adverse impact of the *Bishop Paiute* decision on criminal law enforcement on Indian lands in their county and on the possibility of personal civil liability under 42 United States Code section 1983, the federal civil rights law, if search warrants are served in violation of this case. In *Bishop Paiute*, individual civil liability under section 1983 was imposed. While this concern is understandable, the Attorney General believes the application of this opinion is actually very narrow and compliance easily achieved.

The Attorney General disagrees with the legal reasoning underlying the *Bishop Paiute* opinion, and further appellate review continues. However, even if the opinion becomes final, it is very narrow in application and should have only limited impact on local law enforcement. The following addresses specific law enforcement situations and the impact of the *Bishop Paiute* opinion:

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- **Authority to Enforce Criminal Laws for Crimes Committed Inside and Outside Indian Country:**

Except as detailed below, the authority granted by Public Law 280, and state law, to enforce state criminal laws against both Indians and non-Indians, for crimes committed inside and outside Indian country, remains unchanged by the *Bishop Paiute* opinion.

- **Authority to Arrest or Detain Inside Indian Country:**

The criminal jurisdiction granted by Public Law 280 renders an arrest in Indian country no different from an arrest by a sheriff or police officer anywhere else in the jurisdiction. By virtue of Public Law 280, a reservation boundary is nonexistent for criminal jurisdiction purposes, and this is unaffected by the *Bishop Paiute* opinion.

- **Authority to Conduct Searches and Seizures Inside Indian Country Which are Directed to an Individual:**

There is no question that a search warrant (or subpoena) may be directed at an individual tribal member. The *Bishop Paiute* opinion specifically acknowledges this point. The search warrant (or subpoena) can be directed to the individual, his personal property or his residence. This analysis also applies to warrantless searches.

- **Authority to Conduct Searches and Seizures Inside Indian Country Which are Directed to the Tribe:**

The area affected by *Bishop Paiute* is the service of search warrants (and subpoenas) where the object is to obtain "uniquely tribal property" held by the tribe. This phrase includes business, employment, health and housing records maintained by the tribe. Until the *Bishop Paiute* litigation is resolved, legal process should not be used to obtain such property. Other options for obtaining needed evidence should be explored, including seeking the tribe's cooperation or obtaining the information from other sources.

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As stated above, the *Bishop Private* case remains in litigation. For this reason, the holding in the case, its application and import to California law enforcement may change. The Ninth Circuit is currently considering a request by Inyo County to reconsider the decision. It is possible the decision may be modified by the Ninth Circuit or changed as a result of an appeal to the Supreme Court of the United States.

If you have questions regarding this issue, please contact the undersigned at (916) 324-5293.

Sincerely,



ROBERT R. ANDERSON
Chief Assistant Attorney General

For BILL LOCKYER
Attorney General