James E. Marino, Esq.
1026 Camino del Rio
Santa Barbara, CA 93110
Tel. (805) 967-5141

Attorney for Plaintiffs
SBN 57706

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRIENDS OF AMADOR COUNTY, BEA CRABTREE, JUNE GEARY, Plaintiffs, vs. KENNETH SALAZAR, SECRETARY OF THE UNITED STATES DEPARTMENT OF INTERIOR, United States Department of Interior, THE NATIONAL INDIAN GAMING COMMISSION, GEORGE SKIBINE, Acting Chairman of the National Indian Gaming Commission, et al., Defendants	Case No. 2:10-cv-00348-WBS-KJM MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT Date: November 7, 2011 Time: 2:00 p.m. Courtroom: 5 Judge: The Hon. William B. Shubb TRIAL DATE: 15 Nov. 2011

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

PREFACE: To reduce space, the following abbreviations are used throughout the brief.

Buena Vista Rancheria of Me-Wuk Indians	BVRMI
Bureau of Indian Affairs	BIA
Department of Interior	DOI
Secretary of Interior	Secretary
United States District Court	USDC
Indian Gaming and Regulatory Act of 1988	IGRA
National Indian Gaming Commission	NIGC
Tillie-Hardwick v. United States complaint	THC
Tillie-Hardwick v. United States 1983 Stipulated Judgment	THSJ #1
Tillie-Hardwick v. United States 1987 Stipulated Judgment	THSJ #2
Amador County Superior Court	ASC
Indian Reorganization Act of 1934	IRA

References herein to Plaintiffs Request for Judicial Notice and the documents supporting summary judgment will be by the initials PRFJN followed by document number.

I. INTRODUCTION

This case represents a classic example of what can occur from the mis-interpretation of a stipulation in an earlier class action. It also evidences Defendants improper application of federal law and Indian policy resulting in a series of violations of the Administrative Procedures Act [5 USC 701 et.seq.] and improper use of the Indian Gaming and Regulatory Act of 1988 [25 USC 2701 et.seq.] to approve a site specific class III gambling casino on ineligible lands for an improperly organized Indian tribe, which acknowledgement was obtained by a part Maidu Indian descendant fabricating a putative tribe or band of Indians she called "The Buena Vista Rancheria of Me-Wuk Indians" a fictional entity cut out of whole cloth. A putative tribe made up of her and her two children, in order to build a gambling casino.

The complaint on file herein raises two distinct questions. 1) The eligibility of the B.V. land for gaming and Defendants unlawful approval of a site specific gaming ordinance and tribal-state class III gambling compact, and 2) The unlawful process employed by Defendants in organizing and acknowledging an entity called "The Buena Vista Rancheria of MeWuk Indians" for one DonnaMarie Potts.

II. DISCUSSION

A. THE RELEVANT HISTORY OF THE 67.5 ACRE PARCEL OF FEE LAND AT BUENA VISTA CALIFORNIA AND THE CHAIN OF TITLE AND EVENTS OCCURRING SINCE THE LAND WAS PURCHASED IN 1927

1. The 67.5 acres of fee land at Buena Vista in Amador County, California was never an Indian reservation.

All Indian ***reservations*** must be created by an act of Congress "reserving" public domain lands, usually by a treaty[1] ceding lands, or by a specific set aside of land by Presidential decree or other order made under powers granted the Executive Branch of government by Congress. Reservation lands are largely created for the exclusive and permanent benefit of a named historic Indian tribe, band or community of Indians having all the historical political and governmental incidents of an Indian tribe and which is a homogeneous tribe, band or community, who have exercised jurisdiction over the affected lands, had a continuing functional self-government and have maintained ongoing governmental relationship with the United States and that tribal government. [See the declaration of former U.S. attorney William Wirtz, PRFJN Doc. #40]

[1] Since The Indian Act of 1871 no additional Indian treaties were allowed to be made.

In California only four Indian Reservations were created by Act of Congress in 1864. [See Congressional Act of 1864, 13 Stat. 39.] Subsequently there were several specific named set asides of land by the President of the United States which were treated as if they were reservations because they were created as a permanent home for specific named Indian tribes by Executive Orders setting aside specified lands for those named tribes or bands of Indians. [See for example the discussion in Donnelly v. United States [1913] 228 U.S. 243 and also Matz v. Arnett [1973] 412 U.S. 481. See also The Mission Indian Relief Act of 1891, 26 Stat. 712.] Buena Vista was not one of these set asides.

Between 1885 and 1930 problems were identified by a series of field reports from California with respect to the plight of several small groups, families or communities of displaced Indians, some of whom had a specific tribal affiliation but many others who were individuals or families of itinerant, indigent and homeless Indians without any specific tribal affiliation. Many were part Indians or mixed blood Indians. Where there were recognizable homogeneous tribal groups or communities, such

as those found near the chain of Spanish Missions in Southern California, land was set aside by the President or his representative. There were approximately 20 such "set asides" under The Mission Indian Relief Act in southern California created during that period for specific bands.[2]

2. The creation of rancheria lands in California

To deal with the problem of these small scattered groups of essentially homeless Indians in Northern and Central California, Congress appropriated monies from time to time, upon requests from the Department of Interior [hereinafter DOI], Bureau of Indian Affairs (formerly Indian Service) [hereinafter BIA], in order to purchase small parcels of land on the open market in fee title as a place where these Indians could live, farm and ranch if they chose to do so. These lands were sometimes acquired in the name of, or described as being for the benefit of, a defined homogeneous group, community or band of Indians. Many times, however, they were simply purchased in fee with the United States holding fee title and allowing any Indians or part Indians to live on and use that land when

[2] One band or tribe, the Chemehuevi of the Colorado river Indians was later added based on the controversial claim they were located partly in California and had been mistakenly omitted from the Act enacted for the benefit of the California Mission Indians.

they applied for and received an assignment. Such use and occupation was "at will" and could be terminated by the Indian occupant/assignees or by the United States at any time. [See B.I.A. letters to the Olivers granting an assignment beginning October 1948. [P.R.F.J.N. Docs. #4 & 5 and 10] [See also formal opinion of the U.S. Solicitor P.R.F.J.N. Doc. 31 and the declaration of former U.S. attorney William Wirtz [PRFJN Doc. #40.]

The 67.5 acre parcel of land at Buena Vista in Amador County California [hereinafter simply B.V.] was just such a parcel of land purchased in fee by the United States in 1927 from Louis and Marjory Alpers. [PRFJN Doc. #1 a copy of the funding letter, P.R.F.J.N. Doc. #2, a copy of the original deed to the U.S. from the Alpers] and the rancheria title status records in PRFJN Doc. #10.]

The Oliver family group, consisting of Louie Oliver, Annie Oliver, Johnnie Oliver and Josie Reye, took up residence on the Buena Vista Rancheria land without a formal assignment to do so. Those parcels of "Rancheria" lands were most often acquired in fee, not held in trust or held for the benefit of any particular Indian tribe or specified community of Indians, nor were they ever properly

"reservations" specifically created by any act of Congress or by any presidential decree or set aside, although at times they were referred to as "a reservation" and sometimes as an allotment. As set out above, Indians were allowed to occupy and use the land by what was called an assignment either a formal written assignment or informal assignment. Rancheria use and occupancy was terminable "at will" by either the U.S. or by the assignee Indians and created no permanent rights inuring to the Indian assignees.

3. The AUTHORITY of the Secretary of the Department of Interior to "acknowledge" or determine who is "Indian" or who or what constitutes an Indian tribe, band or community of Indians, prior to 1978, was defined by administrative law and by federal Indian policy and practice using the applicable mandatory criteria as it then existed.

The power of the federal government, acting through the DOI and BIA, initially included the power to acknowledge, recognize and identify specific historic tribes, bands or communities of Indians that had identifiable, functional internal governments and a long standing continuous government to government relationship

with the United States, usually dating back at least to 1900 if not to original contact with Europeans. [See Wirtz Declaration, PRFJN Doc. #40.] Some tribes also had a tribal land base though it may have been previously allotted in whole or in part to tribal members under the Dawes Act (General Allotment Act of 1887, 24 Stat. 388, 25 USC 331).

By 1919 it was clearly intended that any and all Indian reservations had to be created by Congressional Statute or enactment not by the piecemeal Presidential decrees and administrative orders that had occurred since 1871 when further treaties were banned.

See for example Sioux Tribe v. United States (1942) 316 U.S. 317, 325-331 and Hayes v. Grimes (1949) 337 U.S. 86, 103.

The mandatory tribal recognition criteria were in use prior to 1934. A well defined historical political and governmental structure was, and still is, essential for any tribe or band of Indians to receive federal acknowledgement and recognition as a tribe. ***There was not, and still is not any other method of creating Indian tribes and bands to be lawfully recognized and acknowledged as a tribe entitled to federal benefits and services inuring to Indian tribes***

unless it is by the process and evaluation set out in 25 C.F.R. part 83, or an Act of Congress or a specific non-ambiguous court judgment.

In 1934 Congress enacted the I.R.A. 25 USC 465 et.seq. The (IRA) authorized the Secretary of Interior to acquire lands by purchase, donation and gift for the benefit of Indians, Indian tribes, bands or communities, **IN TRUST**. This provision in the I.R.A. was primarily for those historic Indian tribes who had been dis-established, dissolved or had lost their Indian tribal and sovereign political status by virtue of the effects of the allotment of tribal lands under the Indian Allotment Act of 1887 [Dawes Act] (24 Stat. 388) 25 USC 331 supra. [See the discussion in Carcieri v. Salazar. [2009] 555 U.S. ____, 129 S.Ct. 1058, 172 L.Ed. 797 supra.] Under the Dawes Act, when an Indian tribe that had ceded or treaty lands, had allotted all tribal or communal lands to the various tribal members, **then the tribes political or semi-sovereign status ended**.

4. The impact of the 1934 Indian Reorganization Act [25 U.S.C. 465 et.seq.]

Sections 465, 479 and others of the I.R.A. authorized the Secretary to acquire lands **IN TRUST** for those historic

Indian tribes, bands and communities under their jurisdiction, superintendence and control on or before 1934.

Following the enactment of the I.R.A. field agents or representatives of the B.I.A. sought out Indians, whether tribes, bands, communities, individuals, or small groups and families of individual Indians. Often these efforts mistakenly included non-Indian persons identified as Indian[3] who were contacted and certified as eligible to vote for or against accepting the provisions and benefits of the I.R.A. If they voted in favor of that Act they were then able to petition the federal government for recognition and acknowledgement as an Indian tribal entity along with submitting a proposed tribal Constitution and an initial or "base roll" of tribal members, to be approved by the Secretary. They were also able to petition the Secretary to acquire land or additional lands to be taken in trust on their behalf. Indians who voted in favor of the I.R.A. but did not seek acknowledgement as a tribe ***were classified as "unorganized Indian tribes"*** or bands. The 4 adults in the Oliver family voted in favor of the I.R.A. [PRFJN Doc. #3.]

[3] The source of information was almost entirely the representations of the persons contacted without any meaningful verification of that information.

The entire program was conducted under somewhat arbitrary and piecemeal practices and procedures used by these field agents who had the authority to identify persons they believed to be "Indians" or part Indians for I.R.A. certification without any meaningful criteria or verification of their true status, particularly verification using the well developed mandatory criteria to insure they were in fact a historic independent, political, Indian tribal governmental entity, functioning as a true tribe or semi-sovereign Indian entity.[4] The mandatory criteria in use at the time should have included at least proof of a long-standing and functioning Indian tribal government and governmental relationship with the U.S. to qualify for tribal recognition.

5. How an identified geographical location of a parcel of land, occupied by Indians such as those often found in California and called "rancherias," metamorphisized into putative Indian tribes, bands or communities by simply using the same name as the site they were found to be living on.

[4] Nothing in this 1934 I.R.A. process was ever intended to circumvent the formal processes to obtain federal acknowledgement or recognition that existed at the time, later codified at 25 C.F.R. part 83.

These haphazard practices used by the B.I.A. resulted in identifying tiny groups, bands, or even small families, often with only a handful of members, who were then classified by field agents as if they were a homogeneous tribal political entity, some with as few as one or two members and who were then described as if they had a tribal identity simply by reference to the location where they were found.

At Buena Vista the 4 adult family members of one family, Louie Oliver, Annie Oliver, Johnnie Oliver[5] and Jose Reyes were all certified in 1934 as eligible to vote for or against the I.R.A. even though they did not constitute any specific tribe, band or community of Indians at the time, never had any functioning tribal government of their own never had any prior historical and political existence, nor any evidence of any long standing government to government relationship with the United States or any federal or state governmental agency. [P.R.F.J.N. Doc. #3] These family members were likely affiliated with or descended from California Miwok ancestors or from a mixed ancestry of various Indian groups who inhabited the region in the past.

[5] Johnnie Oliver is the grandfather of Plaintiffs Bea Crabtree and June Geary.

In fact a band of Miwok Indians in the area of Amador County near Ione, had been identified by census and already had a 40 acre parcel of land set aside for them by the B.I.A./D.O.I.

Thus Indians residing at a particular rancheria location began being referred to "off hand" by the federal agencies as if they were, or had somehow become, an acknowledged or identified Indian, tribe, band or community of the same name without ever being investigated or applying for acknowledgement and verified by the mandatory recognition and acknowledgement criteria. The persons at Buena Vista thus became the Buena Vista Rancheria and so on, even though in most cases, a particular "rancheria" was nothing but a parcel of land held by the U.S. in fee and was clearly not the verified existence of any tribe by that name.

This practice was improper and in effect evaded the mandatory criteria that must always be demonstrated before any Indian group can attain official acknowledgement and recognition as a tribe. Administrative recognition criteria existed at the time and were later codified at 25 C.F.R. part 83.

When the Tillie-Hardwick v. U.S. case was filed in 1979 and later certified as a "class action," the named rancheria locations of parcels of land like Buena Vista were included as if they were ***"Plaintiffs,"*** in addition to those named individuals forming a class as Plaintiffs in that case. "Buena Vista Rancheria" mistakenly became a named Plaintiffs as if it was a separate tribal/political entity with the legal capacity to sue in it's own right, as were many other "rancherias."[6] None of the 4 adult members of the Oliver family or any individual Indians living on the Buena Vista fee land at the time were named as individual Plaintiffs in that case.[7]

B. THE DEVELOPMENT AND CODIFICATION OF MANDATORY ACKNOWLEDGEMENT CRITERIA IN 25 C.F.R. PART 83 AND THE EVENTS THAT OCCURRED AT BUENA VISTA FOLLOWING THE ENACTMENT OF THE I.R.A. IN 1934 AND THE CERTIFICATION OF THE VOTE.

Following their 1934 vote in favor of the I.R.A. [P.R.F.J.N. Doc. #3] these B.V. residents were technically considered by D.O.I. to be an "unorganized tribe" under

[6] It is important to note here that this erroneously named Plaintiff in Tillie-Hardwick was The Buena Rancheria, not the later fabricated "Buena Vista Rancheria of Me-Wuk Indians".

[7] A tract or parcel of land cannot be a Plaintiff in a personal action as was the Tillie-Hardwick case because a parcel of land had no capacity to file suit, raising issues that inured only to persons residing there such as the unlawful termination of their status as an Indian.

rules then in effect. However they never sought to officially organize and petition to have the B.I.A. acknowledge the existence of any actual Indian tribe, band or community, nor did they draft or submit any proposed tribal Constitution as required by the I.R.A. for D.O.I. approval nor did they compile and submit a "base membership roll" for submission to the Secretary for approval.

As set out above because of the many problems in recognizing and the acknowledging true "Indian tribes" after 1934, the B.I.A. and D.O.I. established the specific mandatory objective criteria set out in 25 CFR part 83. That section contains seven express mandatory acknowledgement criteria. The federal "List Act" of 1978 was adopted so that if the name of the tribe, band or group lawfully obtained acknowledgement as a "tribal entity" it appeared on the list and can then obtain benefits and services. It was never intended that the List Act entitled a tribe to become officially acknowledged simply by having their name appear on a list.[8]

[8] Clearly no "Indian" tribe, band or community should appear on the list created by the provisions of 25 CFR 83, unless they have first met all of the mandatory acknowledgment and recognition criteria, and have been verified prior to being placed on the list. It would be the height of bootstrapping illegitimacy to claim that acknowledgement and recognition of any Indian tribe was established merely by their name appearing on the list provided for by the B.I.A. Clearly it was presumed that any Indian tribe, and/or community being placed on the list was already lawfully established to exist long prior to being placed upon the list and the mandatory criteria had been fulfilled.

In addition to this problematic approach to identifying real Indian tribes or entities entitled to federal acknowledgement and recognition, whoever is entitled to become a member or enrolled member of any acknowledged "Indian tribe" (once acknowledged whether properly or not) under current federal policy is a matter left up to the sole and exclusive discretion of whoever it is that claims to be the elected or appointed government of that "Indian tribe."[9]

It is through this badly flawed process that the B.I.A./D.O.I. came to acknowledge and recognize a putative Indian entity created by DonnaMarie Potts out of whole cloth between 1986 and 2004. A "tribe" that she then arbitrarily entitled "The Buena Vista Rancheria of Me-Wuk Indians," ultimately consisting of her and her two children after the death of Lucille Lucero in 1995.[10] That defective organization and recognition process is part of the allegations in the underlying complaint.

---

[9] For largely ambiguous reasons justified by the pseudo "sovereignty" of "Indian tribes" once federally acknowledged, the B.I.A. refuses to intervene in tribal enrollment issues, denials and dis-enrollments even when they involve egregious violations of individual rights and important legal issues.

[10] The improper organization and acknowledgement of this putative Indian tribal entity is also challenged in this lawsuit by Plaintiffs Bea Crabtree and June Geary who are the lawful persons entitled to organize and petition for federal acknowledgement if any one was. But that dispute is not a part of this Motion for Partial Summary Judgment and adjudication and is a subject left to further litigation.

C. THE CURRENT AND PAST STATUS OF THE FEE LANDS LOCATED AT BUENA VISTA IN AMADOR COUNTY CALIFORNIA AND IT'S LACK OF ELIGIBILITY TO CONDUCT GAMING UNDER THE IGRA

As set out above the federally owned fee lands at B.V. were purchased in 1927 from Louis and Marjory Alpers in fee, not in trust for anyone. [PRFJN Docs. #1, #2 and #10.]

On or about Jan. 5, 1956, four of the Olivers sent a letter to the D.O.I., signed by all of them, seeking to acquire fee title to the B.V. land. [P.R.F.J.N. Doc. #6.] Although that request was rejected, the B.I.A. did authorize their continued use and occupation on the B.V. rancheria under the "informal assignment" they were given on 19 Oct. 1948 [P.R.F.J.N. Docs. #5 and #6.] The B.I.A. letter also pointed out, parenthetically, that rancherias were acquired in fee by the federal government for the general non-specific benefit of any needy Indians and the B.V. land was not acquired for the Olivers or any identifiable tribe, band or community of Indians.

On or about 1958 Congress sought to eliminate the many scattered parcels of Rancheria fee lands in California as well as some of the small "reservations" that had not been

formally authorized by Congress or created by the specific set asides as "reservations." To that end Congress enacted the Rancheria Act Public Law 85-671, [72 Stat 619]. That Act established an orderly process whereby these parcels of fee lands could be conveyed and deeded in fee to the occupant/assignees for free. Besides requiring proper notice the process also required an agreement between the occupant/assignees and between anyone claiming any interest to the rancheria lands, to determine who should be deeded ***unrestricted*** fee title to the lands. The Act provided a process to resolve any disputes concerning distribution of the rancheria lands as proposed. Once an agreement was reached with the occupant/assignees the B.I.A./D.O.I. prepared a plan of distribution. [In the case of the Buena Vista lands, see P.R.F.J.N. Doc. #7.]

On or about the 18 Aug. 1958 the B.I.A. presented this plan for the distribution of the entire 67.5 acres of land in fee to Louie Oliver and Annie Oliver. The Oliver family had been the sole and exclusive occupiers of the B.V. lands for some thirty years, had made the improvements there at their own expense including a residence, a reliable water supply, sewer system and other fixtures and features.

[P.R.F.J.N. Doc. #7] Earlier and from time to time other Indian persons had sought to live there and use the land through assignment [P.R.F.J.N. Docs. #4-5] there were no objections to the implementation of the 1958 distribution plan from anyone else and there were no unfulfilled promises made to the Olivers or any unfulfilled promises to make improvements that were to be completed by the federal government prior to distributing the rancheria fee lands, and no unfulfilled promises for education or training requested to be provided to any of them.

On 6 Oct. 1959 the D.O.I. deeded the entire 67.5 acres of fee lands to Louie Oliver and Annie Oliver in fee simple as joint tenants and as husband and wife.[11] [See P.R.F.J.N. Doc. #8.] There were no restrictions of any kind placed on their property by the B.I.A./D.O.I. and the Olivers were informed of that fact by letter from the B.I.A.. [See P.R.F.J.N. Doc. #9.]

Six months later, on 26 Feb. 1960 the Olivers used their land as security or collateral to secure a loan and needed no B.I.A. approval to do so. [See P.R.F.J.N. Doc.

[11] The use of that latter phrase in a deed or conveyance in California denotes an intent to take and hold property as community property as well.

#11.] As set out above no efforts had been made after the 1934 I.R.A. vote, nor after this conveyance in 1959 by any Indian person or entity seeking to organize any tribe or band of Indians either by any of the Olivers or former assignees or residents of the B.V. rancheria until the efforts of DonnaMarie Potts nearly 30 years later.[12]

The Tillie-Hardwick judgment only restored status that existed prior to the distribution of rancheria lands and the termination of individual Indian status of those who received the distribution of land. Individuals were restored to Indian Status. Any tribal or communal band or entity was restored only to their pre-existing status. In the case of B.V. (and many others) that status was either nothing or as an unorganized group entitled to organize if they had voted for the I.R.A. The Tillie-Hardwick judgment did not establish either a method or consistent process to determine when or by whom and how any tribal re-organization should occur after Tillie-Hardwick. See the leading I.B.I.A. decision in Jeffrey Alan-Wilson v. Sacramento Director, B.I.A. 30 I.B.I.A. 241, [04/01/1997].

[12] The status of tribes that voted in favor of the I.R.A. in 1935 under B.I.A./D.O.I. classified immediately became unorganized I.R.A. tribes for a period following a favorable vote and remained unorganized until they completed the statutory acknowledgement process.

The question arose as to whether members of the unorganized tribe or their descendants could pursue organization or only those members or their descendants who received a distribution of land could do so. Bea Crabtree and June Geary did not receive an original distribution of land but were entitled to be included in any reorganization effort. Because a land base is such an important part of tribal organization or re-organization, the better position perhaps should have been, that any distributees of the former rancheria lands who elected to convey the land they received back to the federal government in trust would and should have been the persons entitled to organize and re-organize any tribal entity after the Tillie-Hardwick judgment. Instead inconsistency and confusion still surrounds the question of who was entitled to continue any tribal organization or re-organization when the Tillie-Hardwick judgment restored them to their pre-distribution status as an unorganized band who voted in favor of the I.R.A. and what time limit should have been imposed on any right to organize.

D. THE TILLIE-HARDWICK LAWSUIT FILED IN 1979 BY CERTAIN INDIVIDUALS AND "RANCHERIAS" AND LATER MADE A CLASS ACTION

Twenty years after the Olivers were deeded the entire B.V. acreage, in unrestricted fee, a group of individual Indians living on and occupying the Pinolville, Redwood Valley and Big Valley Rancherias, filed a lawsuit later certified as a class action.[13] [See P.R.F.J.N. Doc. #15.][14] In their complaint, Plaintiffs alleged the federal government breached promises made to them on dissolution and distribution of rancheria lands. These promises included improvements to be made to roads, sewer and water systems and structures and they alleged the agreements were breached and the promised improvements never made. They also alleged defendants breached promises to provide certain personal education programs and services that were to be furnished to those rancheria occupants who sought them out as provided for in the Rancheria Act but they did not receive them. [See Tillie-Hardwick complaint sections 21-26 P.R.F.J.N. Doc. #15.] Of particular importance in relation to the later 1983 and 1987 stipulation was the prayer of the complaint art. 4.d. and f. and art.8.a. and b. praying for the right to an election to either keep the

[13] As set out supra the class included the names of parcels of other rancheria lands by their location as if they had a legal identity and the capacity to be a party to a lawsuit.

[14] One of the Plaintiffs was ostensibly "the Buena Vista Rancheria." None of the Olivers or former occupant assignees were named individual Plaintiffs.

land they received in fee or convey it to the United States in trust. In relevant part the complaint further alleged that dissolution of the rancherias was unlawful because, ***once the lands were distributed to occupants and assignees residing there or according to the plan of distribution, the Act provided the occupants and assignees would lose their status as individual Indians***. Also those groups that had been previously lawfully acknowledged and recognized by the federal government as a tribe or an established political/governmental Indian entity, band or community of Indians, (if any had in fact been previously established) they would automatically lose that status, in effect dis-establishing the previous federal acknowledgement they had obtained as an Indian entity.[15] Under the Rancheria Act, even if the land had been purchased for them in trust or for the benefit of a specific communal or common "tribal" entity, then on dissolution the communal land status would nonetheless be terminated. This, they alleged, was an unlawful termination of their tribal status as well as their individual identity and status as Indians.

[15] The complaint and judgment did not create or seek to create any ***new*** Indian tribes.

The caption of the complaint named 17 "rancherias," as Plaintiffs but in the B.V. case, could only have included the fee land the Olivers had resided on at B.V. even though it listed as a Plaintiff "the Buena Vista Rancheria" as if such rancheria land had become some kind of an individual tribal identity in it's own right with legal capacity separate and apart from the individual occupants and assignees like the Olivers who had lived on that assigned rancheria land.[16] Apparently without challenge by other parties, or by the court sua sponte, the case was allowed to proceed as a class action with all these named "rancherias" as "Plaintiffs."[17] The record is devoid in many cases, like the case involving the Olivers as fee owners of the B.V. land, explaining exactly what communication and participation the Olivers, or their heirs, ever had with the primary individuals or lead Plaintiffs filing suit or for that matter any persons from the other named "rancherias" named in the lawsuit or even with the lawyers representing the lead Plaintiffs. Both Annie

[16] In fact Louie and Annie Oliver had been dead for a few years before the suit was even filed.

[17] This caused considerable confusion. The caption of the Tillie-Hardwick case, coupled with the frequent administrative reference to Indian occupants as being "a rancheria" as if that were a tribe or band of the same name contributed to confusion and the mistaken belief that a "rancheria" was somehow a separate legal entity like a tribe, band or community of Indians by the same name, and which had attained lawful acknowledgement and recognition (i.e., a "tribe" was created by simply identifying a parcel of land that was a former rancheria fee parcel at a particular geographic location as a named Plaintiff in the case.)

and Louie Oliver and Enos Oliver were all deceased by the time that suit was filed in 1979. [See P.R.F.J.N. Docs. 13 & 20.]

The Tillie-Hardwick lawsuit named the United States as a defendant and named several counties, alleging the counties in which the distributed rancherias were located, had illegally imposed property taxes on rancheria lands since those lands had been deeded and distributed ("illegally" they claimed) under the processes established by the Rancheria Act. This allegation was apparently based on the fact that the rancherias had been federal fee lands and untaxable as rancherias. Because that land status was alleged to have been unlawfully terminated, then the respective counties should not have imposed property taxes after the distribution of that land ***even though it was deeded to individual owners in unrestricted fee***.[18]

In July 1983 the federal defendants and legal counsel for the class Plaintiffs[19] entered into a stipulation to settle the case which stipulation was then entered as a judgment.

---

[18] No distinction was made concerning federal fee lands deeded to individuals as fee lands like the Olivers who owned the B.V. lands in fee and any land that was held for a communal benefit or held by a named entity such as tribe, band or community of Indians that was terminated.

[19] Again, the record is devoid of the extent of communication that occurred between lead Plaintiffs and their attorneys and fee land owners like Louie and Annie Oliver (deceased), whose heirs owned the 67.5 acre B.V. parcel in fee and who were not any tribal entity of any kind.

E. THE LEGAL EFFECT OF THE 1983 STIPULATED SETTLEMENT, AND THE JUDGMENT ENTERED UPON THAT STIPULATION IN THE TILLIE-HARDWICK V. UNITED STATES et.al. CASE.

A stipulated judgment is no more than an agreement between the parties to a lawsuit that is sanctioned by the court as a means to resolve a pending case and dismiss it without further proceedings. [See Amador County v. Kenneth Salazar et.al. [U.S.C.A.D.C. 2011] 640 F.3d 370, 395 U.S. App. D.C. 110.

The 1983 stipulated judgment provided that the Rancherias had been illegally terminated by virtue of the fact the statute permitted termination of Indian status (and possibly Indian tribal status, if that status lawfully existed before distribution of the lands).

As a result Section 3. of the stipulated judgment provided that all individual occupant assignees on the rancheria lands of the plaintiffs were restored to their status as an "Indian," and therefore entitled to all the federal benefits provided to individual Indians by law (assuming they too had that status in the first place).

In addition Section 4. of the judgment provided that any historic tribal, communal or other political and Indian

governmental entity that lawfully existed as an acknowledged or recognized tribe on any of the 17 rancherias prior to dissolution of the rancheria and distribution of the land, were also restored to whatever that communal or acknowledged tribal status was prior to distribution of the land.[20] The judgment further provided any ***communally owned land or "tribal lands"*** that had existed (if any existed prior to the land distribution) was restored to that communal ownership status it had prior to the land distribution. [Section 7. of the Judgment.] Judge Spencer Williams, who approved that stipulation and judgment, was very careful in providing that all such restorations of status were only to those which previously existed prior to the distribution of the former Rancheria lands and that they must comply with applicable federal law. [See sections 7. and 8. of the judgment.] PRFJN Doc. #15

As set out earlier Congress, or designated federal Executive agencies are the only authority able to acknowledge Indian tribes or create Indian trust lands or Indian reservations acting through authority Congress has

[19]As set out above in cases where a group had voted in favor of the I.R.A. but never organized, that status would be only that of an "unorganized tribe."

under the U.S. Constitution. The Rancheria Act clearly intended to dissolve or dis-establish any Indian lands that existed prior to distribution by providing that ***the lands were to be distributed in fee***. [See the discussion in State of Wisconsin v. The Stockbridge-Munsee Community and Robert Chicks [U.S.C.A. 7th 2009] 554 F.3d 657.] In that case it was held the provision to dissolve any Indian reservation land by fee conveyance expressed a clear Congressional intent to end any existing "Indian" status of the land.

In the 1983 stipulated judgment in Tillie-Hardwick the individual Indian owners of the fee lands resulting from distribution of rancheria lands, were given an election in sections 6., 8. and 9. of the judgment. They could either deed or reconvey the lands they owned in fee back to the federal government in trust, pursuant to the authority of 25 U.S.C. 465, 479, or in the alternative they could elect to keep the land as unrestricted fee owners in perpetuity just as the land was when they were originally deeded their land by the United States. They had two (2) years in which to make this election unless they made a formal Motion to

extend that period of time if they needed it. [Section 12. of the stipulated judgment.]

The court directed the B.I.A. to assist any individual land owner electing to deed the land they owned in fee back to the federal government in trust. [Sec. 12 of the Judgment.] The B.I.A. did assist or offer such assistance. [See P.R.F.J.N. Doc. #17.]

As set out above, in 1983, at the time of the stipulation and judgment in Tillie-Hardwick, Annie Oliver had died, Louie Oliver had also died and Enos Oliver his only son and owner of 1/2 undivided interest had died the year before in 1978. [See P.R.F.J.N. Docs. #20.]

The land owners in 1983 at the time of the stipulation were the estate of Enos Oliver [1/2] and Lucille Lucero [1/2]. Section 2. of the judgment expressly provided that it inured to the benefit of the descendants and heirs of the original occupant assignees who had been deeded the former rancheria lands in fee so the election to convey the land back to the U.S. or keep it in fee also inured to the benefit of the heirs. ***Neither Lucille Lucero [nee Oliver] nor Enos Oliver, deceased, acting through his administrator***

in the Estate of Enos Oliver, elected to deed or reconvey the B.V. fee lands back to the federal government.

Because the possibility existed that some of those individual Indians of the 17 rancherias who were deeded fee lands might elect to deed or reconvey their fee lands back to the federal government in trust, pursuant to the stipulated judgment, the U.S. District court retained jurisdiction to adjust and fix the former rancheria boundaries after the 1983 judgment was entered and the two year re-conveyance period (or any extended period) had lapsed. This was done because the former rancheria lands and boundaries would likely be physically different if some of the fee owners of rancheria lands elected to keep the land they owned in fee and others elected to deed their land back to the federal government in trust thus making a "new rancheria parcel" and thus requiring a re-alignment or re-establishment of new boundaries for the former federally held rancheria land, and the privately owned fee lands which could abut each other. In the B.V. case there was only the one 67.5 acre parcel and no separate parcels within the former rancheria.

In 1976, (also before the Tillie-Hardwick case was filed), Lucille Lucero had executed and made a Will by

which she had devised to DonnaMarie Grove (Potts) all of her right, title and interest in her undivided one-half interest in the B.V. land inherited from her father Louie Oliver in 1973. [See P.R.F.J.N. Docs. #18 & 20.]

As set out above, Enos Oliver had died intestate in 1978 and his undivided one-half (1/2) interest in the B.V. fee land came under the jurisdiction and control of the Amador County Superior Court, Probate Division, charged with administering his estate and ultimately making a final order of distribution of that undivided one-half (1/2) interest by succession.[21]

After entry of the 1983 stipulated judgment and while that Enos Oliver probate case was still pending, Lucille Lucero had, at best, an expectancy of receiving the other 1/2 interest belonging to her brother Enos by the laws of succession. That is because on 24 July 1986 Lucille Lucero conveyed her present 1/2 interest in the B.V. fee lands to DonnaMarie Potts. This conveyance was by grant deed three (3) years after entry of the 1983 Tillie-Hardwick stipulated judgment and were after the expiration of the

[21] Although Enos Oliver married Lydia Fielder [nee Oliver] the ½ fee interest in the land inherited from his father Louie Oliver was likely his sole and separate property under California state community property laws but that would have to be determined by the Superior Court.

reconveyance election period. The deed recited it was made for valuable consideration. [See P.R.F.J.N. Docs. #13, 18 & 20.]

Under California Probate law, changes in the status of land being administered by the Probate court having jurisdiction over any Estate holding a decedent's real property, like that of Enos Oliver, would need court approval for a change in the status of that land, typically by an application or Motion of the personal representative. No such application was made nor approval occurred or any such order entered to convey or reconvey the 1/2 interest in Enos' B.V. land to the United States as provided for by the 1983 stipulated judgment.

F. THE LEGAL EFFECT OF THE SECOND 1987 STIPULATION AND JUDGMENT ENTERED INTO BY AND BETWEEN AMADOR COUNTY AND THE CLASS PLAINTIFFS AND THEIR RESPECTIVE LEGAL COUNSEL IN CASE OF TILLIE-HARDWICK V. U.S. et.al.

Once the 2-year election period, provided for in the July 1983 federal judgment, had ended the only remaining issue over which the federal court had retained jurisdiction, was to determine any need to re-align former

rancheria boundaries and resolve the jurisdictional issues regarding allegations of whether or not the County Defendants had unlawfully imposed taxes or otherwise imposed regulations on the class of rancherias or rancheria lands, affected by the Tillie-Hardwick lawsuit, between the date of termination and distribution and that second 1987 stipulation. Amador County was included as one of the named Counties.

For reasons not clear from the record, the Defendant County of Amador entered into a stipulation that they would not impose property taxes upon former rancheria lands at Buena Vista despite the fact that, at that point in time, the B.V. land was merely ordinary fee lands and had not been conveyed or deeded back to the federal government in trust. This stipulation was apparently executed by the County to finally resolve any and all issues remaining in the Tillie-Hardwick case and to release the County Defendant from any further proceedings in that case and close out and conclude that long pending federal court case. There was no other discernable "consideration" inuring to the County apparent from this stipulation.

A copy of that 1987 stipulation can be found in P.R.F.J.N. Doc. #19. By it's terms it provides that the County would treat the former rancheria lands, (that is the land which by then was owned in fee by DonnaMarie Potts and the estate of Enos Oliver), ***as if it were "Indian Country."***[22]

It is clear however, that, this agreement and whatever purpose it intended to serve was only to establish jurisdictional issues. Moreover it was for the benefit of, and inured only to, the original owners, occupants and assignees who had owned the deeded fee lands and their descendants or heirs, who had, in the case of the B.V. fee lands, declined to convey the land they received in fee back to the federal government "in trust" as provided for in the 1983 stipulated federal judgment and they were foreclosed from doing so any longer by 1987. If the lands had been returned to federal Indian trust status during the two (2) year election period or even if the land somehow

[22] "Indian Country" is a broad generic term which would include federal Indian trust lands, congressionally and administratively created Indian reservations and restricted Indian fee lands, except that the term "Indian Country" refers largely to criminal jurisdiction and some civil jurisdiction as they apply to a variety of federal laws. It is used in a frequently ambiguous fashion, for example in the 1834 iteration of the Indian Non-intercourse Act, Congress provided all American land west of the Mississippi River was "Indian Country." "Indian Country" is not part of the definition of lands eligible for gaming by an Indian entity as set out in 25 USC 2703 and 25 USC 2719 and is not used as a land status definition it is a jurisdictional term. See Alaska v. Native Village of Venetie Tribal Government 520 U.S. 520-525.

still had retained any characteristics of federal Indian reservation lands, as was later erroneously asserted by N.I.G.C. legal counsel Penny Coleman, (her restored reservation theory), there would have been no need for the 1987 stipulation in the first place. No county, including Amador County had the power and authority to tax or regulate any Indian reservation or federal Indian trust lands or even federally owned fee lands. Such a stipulation as the 1987 one would be a meaningless act.

Penny Coleman, in her opinion letter of 30 June 2005 [P.R.F.J.N. Doc. #30] relied entirely upon this Tillie-Hardwick case when she concluded that the Buena Vista fee lands were "Indian Lands" eligible for gaming as she opined, first, because the rancheria had either been "restored" to a prior reservation status by the 1983 stipulation entered into in the Tillie-Hardwick case or secondly had somehow been converted to "Indian Country" by the 1987 stipulation. This interpretation of the facts and applicable law makes no sense whatsoever. As set out earlier the B.V. rancheria was never a reservation. Even if the legal effect of the 1983 stipulated judgment, (the only one joined in by the federal government), ***had somehow***

in fact "restored" the fee owned lands to any kind of Indian "reservation" or restored it to something "like a reservation" as claimed by attorney Coleman, then the 1987 County stipulation was completely unnecessary. Moreover, if Congress had intended to define eligible Indian Lands for gaming purposes in the I.G.R.A., as including any land that was "***like a reservation***" or "***like a small reservation***" or "***treated like a reservation***" or was "***Indian Country***" then they surely would have said so in the language of 25 USC 2703 and 25 U.S.C. 2719 defining what are eligible lands for gaming activity.

In addition the 1987 stipulation and agreement between Amador County and the Tillie-Hardwick Plaintiffs and their legal counsel was not recorded in the Amador County Recorders Office, which would normally be required in order for it to "run with the land" and thus be binding on or inure to the benefit of any subsequent owners, purchasers or assignees of the land as a matter of record title. If this 1987 stipulation had any legal effect at all it was, at best, only a personal agreement with the parties at the time it was made to refrain from imposing taxes. As set

out infra neither of the relevant and indispensable parties owning the land in 1987 ever agreed to it.

Perhaps most importantly, only Congress or the authorized agencies of the federal government have the power and authority to create Indian reservations, or Indian trust lands or any kind of restricted Indian fee lands under federal laws enabling certain federal agencies to do so with delegated Congressional approval and authority. Neither Amador County, the individual fee property owners of the former rancheria land (if they had even joined in that 1987 stipulation),[23] nor the other individual lead class member Plaintiffs and those rancheria plaintiffs that were merely parcels of land along with class legal counsel, either together or individually, did not have, and do not have the power or authority to change the status of fee lands owned by Indians (or anyone else for that matter) to federal or sovereign Indian lands. Nor did these parties have the power and authority to change that land status by any "agreement." [See the discussion in City of Sherrill New York v. Oneida Indian Tribe of New York 433 U.S. 197] illuminating the fact that the only means that fee lands can be transformed into

[23] That would be Potts, the Amador County Probate Court and the Estate of Enos Oliver deceased.

sovereign Indian lands is through the Secretary of Interior under the I.R.A. or by a specific Act of Congress or possibly a specific court judgment expressly and unambiguously doing so.

Neither DonnaMarie Potts nor the Estate of Enos Oliver ever joined in the purported 1987 stipulation and in as much as they were the only fee owners of the entire B.V. parcel of land, their execution of any agreement or stipulation to change the land status was essential in order for it to be legally effective at all, assuming they had the power and authority to make such a change in the first place.

Also, in the case of the Estate of Enos Oliver, an application for a court order by the administrator of his estate and a proper court order, made on proper notice, would no doubt have been required in order to have any legally binding effect upon the B.V. lands being held in Probate Court. Such a stipulation, or lack thereof, would clearly affect, among other things, the inheritance tax appraisal and any inheritance tax and fees due from the estate of Enos Oliver. As still further evidence the B.V. land retained no "Indian status or characteristics" by

1987, no representative of the B.I.A. probate division or the D.O.I. joined in or approved the 1987 stipulation nor the earlier transfer of the 1/2 interest conveyed by deed from Lucille Lucero to DonnaMarie Potts back in 1986.

In fact the D.O.I. Indian Probate Department did not participate in the 1975 probate of Louie Oliver's estate and either of any of the three 1996 Probates involving distribution of the remaining 1/2 interest in the B.V. land.

Finally it has been held that when former Indian trust property has passed through a State court probate process any "Indian status" is generally extinguished. [P.R.J.N. Doc. #25] [which is a copy of the decision of the IBIA in the case of Ruth Pinto Lewis v. Eastern Navajo Superintendent of the B.I.A. 4 IBIA 147 (10/3/1975).]

A court approved stipulation resulting in a judgment is no more than an agreement or contract between parties in settling the lawsuit and is subject to the rules for interpreting contracts and determining the intention of the parties who made the agreement including if anyone had the power and authority to make the agreement in the first place. The only role of the court in such a case is to insure the agreement resolves all matters in issue and

James E. Marino, Esq.
1026 Camino del Rio
Santa Barbara, CA 93110
Tel. (805) 967-5141

Attorney for Plaintiffs
SBN 57706

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRIENDS OF AMADOR COUNTY, BEA CRABTREE, JUNE GEARY, Plaintiffs, vs. KENNETH SALAZAR, SECRETARY OF THE UNITED STATES DEPARTMENT OF INTERIOR, United States Department of Interior, THE NATIONAL INDIAN GAMING COMMISSION, GEORGE SKIBINE, Acting Chairman of the National Indian Gaming Commission, et al., Defendants	Case No. 2:10-cv-00348-WBS-KJM MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT Date: November 7, 2011 Time: 2:00 p.m. Courtroom: 5 Judge: The Hon. William B. Shubb TRIAL DATE: 15 Nov. 2011

PART 2

[CONTINUED MEMORANDUM OF PLAINTIFF'S

MEMORANDUM OF POINTS AND AUTHORITIES PAGES 40-72]

allows the case to be dismissed. [See Amador County v. Salazar (2011) 640 F.3d 370.]

As discussed infra, the terms of the 1987 stipulated judgment blatantly contradicts the 1983 stipulated judgment without any legal authority to do so.

G. THE FEE LANDS AT BUENA VISTA ARE NOT NOW, NOR SINCE 1959, HAVE THEY EVER BEEN ELIGIBLE "INDIAN LANDS" UPON WHICH CLASS II OR CLASS III GAMING IS LEGALLY PERMITTED UNDER THE IGRA WHICH DOES NOT INCLUDE "INDIAN COUNTRY" IN IT'S DEFINITION OF ELIGIBLE LANDS.

To understand the issues involved here one must understand the difference between Indian lands in the sense of land owned by any Indian tribe in fee and Indian reservation lands, Indian trust land or lands owned by any Indian or tribe in fee but which is subject to specific federally imposed or created restrictions on alienation. As discussed above the term "Indian Country" is an ambiguous term used in a variety of contexts and used in many federal statutes for different purposes mostly to establish jurisdiction in connection with the provisions of a particular federal statute. It may, but does not

necessarily, include Indian reservations, federal Indian trust, or restricted Indian fee lands. See the pointed discussion in Alaska v. Native Village of Venetie Tribal Government (2004) 520 U.S. 521-525.

The I.G.R.A. clearly meant to limit or narrow the category of those "Indian lands" that are "Eligible Indian lands," that is, lands upon which an Indian tribe or band can lawfully offer class II or class III gambling operations.[24]

The Indian Gaming and Regulatory Act of 1988 at 25 U.S.C. 2703 provides that the only lands upon which a lawfully acknowledged Indian tribe can engage in class II or class III gambling games are:

> **[1] all lands within the limits of any Indian reservation; and**
> **[2] any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.**

It is undisputed that the fee lands at B.V. are not now and never were in federal Indian trust or have they

[24] Had Congress intended more categories they would have included other types of Indian lands in the definition of what constituted "gaming eligible Indian lands" in the I.G.R.A.

ever met any of these definitions under 25 USC 2703. In addition it should be noted section [1] **does not include "ALL LANDS WITHIN THE LIMITS OF AN *OLD* OR *FORMER* *RESERVATION*"** or land that was "like a reservation." It obviously contemplates land within a current existing Indian reservation as of 1988 and is therefore in harmony with 25 USC 2719.

In 1988 Congress was clearly aware of the term and definition of "Indian Country" and "restricted Indian fee lands" and obviously land that might be "like a reservation" or "treated like a reservation" etc. None of these many possible descriptions were contained in definition of "Indian Lands" in the operative statutes.

What is clear is Congress and the affected federal agencies had no authority or discretion to substitute their own definitions of "eligible Indian lands."

Although it is unclear at what point in time the D.O.I. and the N.I.G.C. must determine if Indian owned land is eligible for gaming under Congress' definition as set out in the I.G.R.A. ***it is clear that such a determination must be made***. [See the correspondence from James Cason Assoc. Deputy Secretary DO] Oregon Governor Theodore

Kulongaski dated May 20, 2005 and Michael D. Olsen Principal Deputy Asst. Secretary and then Speaker of the U.S. House of Representatives Dennis Hastert. [See also the correspondence between the Solicitor for Department of Interior and the N.I.G.C., [P.R.F.J.N. Doc. #37.]

In the case of Citizens Against Casino Gambling in Erie v. Phillip Hogen [U.S.D.C. E.D. N.Y. 2008] 471 F.Supp.2d 295 the District Court concluded such a determination is basic and probably should be made before approval of a tribal gaming ordinance or before approving the tribal-state gaming compact required by 25 U.S.C. 2710(d)(3).

In the case of North County Alliance v. Secretary of the Interior Kenneth Salazar et.al. [9th Circ. 2009] 573 F.3d 738, a sharply divided panel of the 9th Circuit Court of Appeal concluded that because the I.G.R.A. was silent on **WHEN** such a required determination must be made, the 2 judge majority of the court held that they could not imply that such a determination must be made before federal approval of the tribal gaming ordinance or before federal approval of the required tribal-state gaming compact under 25 U.S.C. 2710 d., except in cases where those documents

are "site specific" as to the precise location where gambling is to be conducted. The majority opined, by way of dicta, that the failure of the I.R.A. to provide any reference to such a determination called into question whether it was even required at all. (Ibid.)

Where, however, the federal agency or agencies charged with the responsibility of approving, regulating, licensing and overseeing a particular activity, over which they have jurisdiction and control, such as Indian gaming, then their treatment, interpretation and implementation of those statutes is persuasive if not controlling in determining what Congress intended by the enabling laws. When a federal agency administratively determines what an otherwise silent or ambivalent federal law requires, then that agency's interpretation of the statutory requirement can be used to fill in and define the void. This doctrine has come to be known as "the Chevron Doctrine." Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. [1984] 467 U.S. 837 104 S.Ct. 2778 81 L.Ed 2d 694 1984 U.S. Lexis 118. As set out in the [PRFJN Docs. #34] the Defendants admit to the fact that a land eligibility determination must be made.

U.S.A., Inc. v. Natural Resources Defense Council, Inc. [1984] 467 U.S. 837 104 S.Ct. 2778 81 L.Ed 2d 694 1984 U.S. Lexis 118. As set out in the [PRFJN Docs. #34] the Defendants admit to the fact that a land eligibility determination must be made.

The federal agencies charged with licensing, approving tribal gaming ordinances, gaming compacts and enforcing provisions in the I.G.R.A. are the D.O.I., B.I.A. and N.I.G.C. This correspondence makes it clear that although interagency cooperation is essential the primary determination as to any ***land eligibility determination*** lies with the D.O.I. [See P.R.F.J.N. Doc. 45.] These agencies all interpret the I.G.R.A. as requiring eligibility of the Indian lands for class II or class III gaming must be made, and at the very least, ***must be made*** **before the gambling activity is undertaken on that land.**[25] [See 25 C.F.R. 573(a)13 making gaming on ineligible land an actionable violation warranting fines and closure.] Perhaps as a matter of common sense and fairness, such a determination must be made at least before any tribe expends large

[25] Conducting gambling on ineligible land subjects a tribe to both disciplinary action and also to prosecution under state anti-gambling laws. [P.R.F.J.N. Doc. #39].

amounts of funds to build and operate a gambling facility only to find out after the fact, when ready to open for business, they cannot use it for that purpose.

This was recognized in the well reasoned dissent by Justice Gould in North County Alliance v. Salazar case 640 F.3d 370 supra.

As a result of the fee deed from Lucille Lucero to DonnaMarie Potts, in July 1986 and the final orders of distribution entered in the Amador County Probate Estates of Enos Oliver, Lucille Lucero and Lydia Oliver in May 1996 DonnaMarie Potts[26] acquired fee title to the entire B.V. parcel of land re-uniting fractionated title to all 67.5 acres entirely in herself as sole fee owner by August 1996. [See P.R.F.J.N. Doc. #20.]

When DonnaMarie Potts acquired fee title she made and recorded a grant deed on 1 August 1996 to an entity she had previously entitled "The Buena Vista Rancheria of Me-Wuk Indians,"[27] an Indian entity that did not exist in any lawful form before 1987. [See P.R.F.J.N. Doc. #26.] The

[26] Potts paid Fielder, Lydia Oliver's son for a release of any and all claims Lydia Oliver may have had to the B.V. land because of her marriage to Enos Oliver.

[27] Legitimacy of the organization, recognition and federal acknowledgement of that newly named putative tribe, band or community of Indians is contested in this action but is not part of this Motion for Partial Summary Judgment or Ajudication but is the subject of subsequent resolution.

date this putative "tribe" acquired the land in 1996 was therefore undisputedly 8 years after October 1988. The IGRA provides that any after acquired lands procured by any Indian tribe or band are not eligible for gaming [25 USC 2703 and 25 USC 2719] unless the acquired lands were entitled to some exception to the rule as provided for in 25 USC 2719 and the specific policies and procedures required for approval have all been properly followed. In this case that did not occur.

Immediately after making and recording that grant deed to this putative "tribe"[28] DonnaMarie Potts made and recorded a second grant deed purporting to deed that same B.V. land from this putative tribe of "Me-Wuk Indians" to the Secretary of Interior in trust, executing that grant deed as ***"the spokesperson for this "Buena Vista Rancheria of Me-Wuk Indians"*** [See P.R.F.J.N. Docs. #27.]

That attempt to place the B.V. lands into trust, apparently was made in an effort to make the land eligible for class II or class III gaming activity under the IGRA. It was rejected by the D.O.I. [P.R.F.J.N. Doc. #26.]

[28] It appears the only date which can be ascertained as the date of final recognition of this putative tribe, albeit an improper acknowledgement, is that date of the purported stipulated judgment in December 2004. [See P.R.F.J.N. Doc. #29]

Notwithstanding that rejection on 19 Nov. 1996, on or about the 11th of December 1996 the Defendants D.O.I. approved a tribal gaming ordinance [P.R.F.J.N. Doc. #32] DonnaMarie Potts executed a tribal-state compact with the State of California on behalf of this putative tribe. That compact was executed en mass by now deposed California Governor Gray Davis along with 59 other compacts and under highly questionable circumstances.[29] The compact was approved by the Defendants on 5 May 2000. [P.R.F.J.N. Doc. #32.] An amended tribal gaming ordinance was submitted and approved by defendants on 25 Sept. 2001 [P.R.F.J.N. Doc. #32].

All three of these approval documents state clearly they are for gaming only on eligible "Indian Lands."

H. THE DISPUTE ARISING BETWEEN RHONDA POPE AND DONNAMARIE POTTS OVER WHO HAD A RIGHT TO ORGANIZE A TRIBE AND WHO CONSTITUTED A PROPER TRIBAL GOVERNMENT

[29] The Governor signed some 59 tribal-state compacts in September and October 1999 undaunted by the California Supreme Court's August decision those compacts were not authorized by law. The law involved was declared unconstitutional by the California Supreme Court in August 1999. To rectify the unlawful signing of these compacts the Legislature placed a legislative initiative on the ballot in March 2000 to amend the California Constitution and retroactively legalize the compacts already signed by the Governor and approved by the Legislature. The voters allowing the Constitutional amendment were never informed their vote was ratifying the already executed compacts and were never informed of the terms in these compacts which were, at best, unfavorable to the state and containing little or no revenue or protections for the citizens of the state.

In 1999 Rhonda Morning Star Pope, a true descendant of Jesse "Flying Cloud" Pope (an Oliver), challenged the authority of DonnaMarie Potts to speak for, or to have lawfully organized the so-called Buena Vista Rancheria of Me-Wuk Indians" by her between 1986 and 1999.

When the B.I.A. initially provided no administrative redress Pope she ultimately filed suit in federal court in a case entitled Rhonda Pope v. U.S. Secretary of Interior. U.S.D.C. [E.D. C.A. 2002] Case No. Civ. S-01-2255 FCD DAD [See P.R.J.N. Doc. #28.]

In the course of that lawsuit and based on a B.I.A. determination that DonnaMarie Potts was in fact **NOT** a lawful descendant of any original rancheria occupants/assignees, the court issued a preliminary injunction [See P.R.F.J.N. Doc. #28] preventing Potts from proceeding further with what had, at that point, clearly emerged as an effort by DonnaMarie Potts and non-Indian gambling investors and backers[30] to build and operate a class III gambling casino on the B.V. fee lands including the longstanding sacred Indian burial grounds there.

[30] She originally had a casino development agreement with Cascade Investment group and later a second investment agreement with Mr. Wilmot, dba Buena Vista Devco LLC, a New York corporation.

To prevent the possible loss of the 1999 tribal-state gaming compact unlawfully executed by Potts because of the lack of lawful authority of DonnaMarie Potts to have entered into and executed that tribal-state compact with the State of California in 1999, when she was purporting to act on behalf of the tribal entity she had created, the parties stipulated to lift the preliminary injunction for one (1) day. This was done in 2004 to allow Rhonda Pope to execute the 1999 compact as if she were the lawful spokesperson for this tribe or band of Indians by that name she had invented and in the name in 1999.[31]

Apparently (and rightfully) concerned about the eligibility to conduct either class II or class III gaming at the B.V. site under this factual history attorney Judith Albeitz wrote a letter to the N.I.G.C., ironically over 8 years since the Defendants had already approved a site specific tribal gaming ordinance and amended site specific gaming ordinance and over 5 years after the Defendants approved a site specific tribal-state compact. [PRFJN Doc. #32] On June 30, 2005 staff legal counsel for the N.I.G.C.

[31] It does not appear from the public record that she ever executed a new contract.

Penny Coleman wrote an opinion letter [later described by her as an "advisory letter"] in which she opined the land at B.V. **was eligible** for class II and class III gaming under the I.G.R.A. [See P.R.F.J.N. Doc. #30.]

In that letter she asserted two theories to support her opinion of eligibility. The first, citing the case of Mabel Duncan et.al. v. the United States, [Fed Circ. 1981] 667 F.2d 36, a non-Tillie-Hardwick case seeking monetary damages, attorney Coleman asserted the court held in that case that "Rancherias are numerous small Indian reservations" (she then omitted the rest of the sentence "…or communities in California, the lands for which were purchased by the Government (with Congressional authorization) for Indian use from time to time…" The court in the Pinoleville rancheria case and the Robinson rancheria case [Mabel Duncan et.al. v. United States [Fed. Circ. 1981] 667 F.2d 36 did not declare that rancherias were federal Indian reservations. That dicta was a mere observation in a footnote and included the description of rancherias as mere communities. Those cases turned on the fact that because of close federal supervision and

involvement with a recognized band of Indians situated on a federal rancheria parcel established an Indian trust relationship. Thus the rancheria lands became trust land in those cases. Trust land is distinct from Indian reservation land although the use of the term as if they were synonymous sometimes erroneously occurs. Taking the dicta that from those cases that rancherias were small reservations or communities. Attorney Coleman then asserted the B.V. rancheria should be treated "like a reservation" for gaming eligibility purposes under 25 U.S.C. 2703, rancherias she opined, were "***like little reservations***."[32] She provided no authority or evidence the B.V. land was ever treated like a reservation like the Pinoleville and Robinson rancherias or that the Oliver family was like the Pomo Indian tribes involved in those cases. From the plethora of cases involving the status of former rancheria lands it is clear each one must be examined on its own unique facts.

Neither did attorney Coleman provide any legal authority to establish that Congress intended any Indian

[32] 25 USC 2703 does not define any land that is "like a reservation" or "treated like" a reservation within it's scope and definition.

owned land that was "like a reservation" or "treated like a reservation" was nevertheless intended to be a part of the express definition of eligible "Indian Lands" set out in 25 U.S.C. 2703 or any exception to the rules set out in 25 USC 2719. The case she cited involved the Pomo Indians of the Robinson rancheria which, because of the extensive federal involvement and assistance provided to the Pomo tribe and the fact that that rancheria was obtained and occupied by a homogeneous group or community of Pomo Indians, the court had concluded (**in that case**) it was in effect a "de facto" reservation or it should be treated like a reservation because a long-standing trust relationship had arisen and the rancheria was like "trust land" [**not a reservation**] (whether that was a correct holding or not).

As set out above, that case, and this case and other "rancheria cases" demonstrate that the status of each former Rancheria lands, including those named in the Tillie-Hardwick case, must be analyzed on a case by case basis.

Having erroneously concluded all rancherias were "like little reservations" she further opined that the 1983

stipulated judgment somehow established that all fee lands distributed to fee owners were then automatically restored back to some "reservation" status whether the owners wanted it or not.

The second theory upon which attorney Coleman concluded the B.V. land was and is gaming eligible land was by reference to the 1987 stipulation and judgment entered between Amador County and the class Plaintiffs. She opined this either also "restored" the rancheria lands to a reservation status, or created eligible Indian lands by an agreement from Amador County to treat the B.V. fee lands ***"like it was Indian Country."*** Clearly the 1983 stipulation had only created Indian trust lands for those lands that the Indian fee owners (if any) had elected to re-convey their land back to the federal government in trust.

The Pinoleville and Robinson rancheria cases involved questions of County jurisdiction not reservation status.

Neither of these theories are supported by the evidence or by the applicable law.

In the area of Indian gaming Congress never authorized or gave the Secretary or the D.O.I. or the N.I.G.C. the

sweeping authority and ability to play with the rules and bend or mold them to fit their needs, by creating "rules" and definitions significantly different than that set out in the Congressional Act. [See the discussion of this issue in State of Texas v. United States of America, et.al., Kickapoo Traditional Tribe of Texas (intervenors and real parties in interest) [USCA 5th Circ. 2007] 497 F.3d 491. In that case the 5th Circuit Court of Appeals made it clear that the authority given the N.I.G.C. and the D.O.I. in the area of Indian gaming under the I.G.R.A. is narrow and specific and cannot be expanded by administrative fiat. As set out above Congress knew of the existence of rancherias in 1988 just as they did the concept of "Indian Country" when they enacted the I.G.R.A. in 1988.

If they intended to include such definitions as "rancherias" in the statutory description of what constituted eligible "Indian Lands" for gaming they would have done so.

III. SUMMARY OF LEGAL ISSUES TO BE DETERMINED BY THIS MOTION FOR PARTIAL SUMMARY JUDGMENT OR AJUDICATION BASED

UPON THE ESSENTIALLY UNDISPUTED MATERIAL FACTS AND LAW INVOLVED

a. The fee lands at Buena Vista were never an Indian reservation.

As set out earlier herein Indian reservations can only be created by Act of Congress or such executive powers that are granted to the President by Congress and the Executive Branch of government and those responsible Administrative branches of government duly authorized to create reservation land under the IRA or to set aside land for the use of a particular Indian tribe, band or community of Indians by taking it into trust. City of Sherrill New York v. Oneida Indian Tribe of New York. [2005] 433 U.S. 197 supra.

b. The Tillie-Hardwick judgment did not restore or create any Indian reservation or create ANY CATEGORY of Indian trust land, "Indian Country" or restricted fee lands eligible for gaming under the IGRA.

Contrary to attorney Coleman's erroneous interpretation of the Tillie-Hardwick judgment, it neither created or "restored" any Indian reservation or Indian lands of any kind unless that status lawfully had existed

already, that is, prior to the distribution of the fee lands of the former rancherias distributed previously pursuant to the Rancheria Act, that is, any status it did not have there was no existing tribe of Indians called the Buena Vista Rancheria at that time.

As set out above all lands distributed to individual Indians in fee at the termination of the rancheria land they were occupying when the Rancheria Act was implemented, could be retained by them in unrestricted fee and private ownership if they elected to keep it in fee rather than deed it back to the United States in trust as provided for in the stipulated judgment.

As set out above, Judge William Spencer who approved the 1983 Stipulated Judgment, was very careful when approving that judgment to insure that whatever communal or tribal ***"restoration"*** he approved was only that which previously existed under federal law. [See section 4. of the judgment.] And section 7. which provided "...the Indian tribes, communities or groups of the seventeen rancherias listed in paragraph 1 that are recognized by the Secretary of Interior pursuant to paragraph 4 herein..."

In addition, as evidenced by documents in P.R.F.J.N. Docs. #27 and 38, as late as July 2003 the Defendants admitted the BVRMI was never lawfully organized even though both a site specific tribal gaming ordinance and amended ordinance and a site specific tribal-state gaming compact had been approved years earlier. To correct this fatal defect Defendants purported to enter into a stipulated settlement between Potts, Pope and the casino developer agreeing to organizational issues in violation of 25 C.F.R. part 83 and without the participation of Bea Crabtree and June Geary who are direct tribal descendants of Johnnie Oliver a member of the unorganized band of Indians who had lived on the rancheria lands and had voted in favor of the 1934 I.R.A. Johnnie Oliver's status as a tribal member was never terminated because that termination only occurred for band members Louie and Annie Oliver because they received a distribution of fee land under the Rancheria Act and the Tillie-Hardwick judgment only restored Indian status to those Indians who had that status terminated because they received a distribution of former Rancheria lands. Johnnie

Oliver's trial descendants were required to be included in any initial organization. [See PRFJN Doc. #41.]

c. Even if the 67.5 acres of fee land, being held as a rancheria had any "reservation status" or any color of that status on dissolution and distribution of the land such "reservation status" was lawfully dis-established or diminished by the voluntary acts of the affected Indians who elected to retain the land in fee and reject the opportunity to reconvey it to the U.S. in trust an restore it' status.

It is well settled that the voluntary acts of an Indian tribe, band or community diminishing or dis-establishing their reservation lands, is something that is well within their power and discretion to do so. [See State of Wisconsin v. The Stockbridge-Munsee Community and Robert Chicks [U.S.C.A. 7th Circ] 2009 554 F.3d 657.]

In the present case the class action complaint on file in the Tillie-Hardwick case specifically prayed for the right of all plaintiff occupant/assignees of the 17 rancherias named as Plaintiffs[33] to either keep the land

[33] As pointed out earlier a "rancheria" was a parcel of land and had erroneously become a shorthand way of referring to a particular group of Indians by the same name as the location of the

they had been deeded in unrestricted fee or to convey it back to the federal government in trust under the authority of the I.R.A. 25 USC 465 et.seq. Rancheria ***land*** was not an independent separate legal entity like a corporation nor were most rancherias Indian entities with standing or capacity to file suit themselves in their own name or right. Because of the erroneous practice of referring to rancheria lands by their location as if they were somehow synonymous with a lawfully acknowledged and recognized Indian tribe significant confusion arose. Rancheria lands were parcels of land which erroneously began to be referred to as if the name of the location of the land was an Indian tribe or community of Indians by that name thus evading the mandatory requirements needed to verify and attain lawful recognition and acknowledgment, criteria now codified at 25 CFR part 83. Moreover in the case of Buena Vista no Indian entity called "The Buena Vista Rancheria of Me-Wuk Indians" ever existed between 1927 and 1983 when the Tillie-Hardwick case was settled.

---

rancheria lands thus improperly avoiding the mandatory recognition and acknowledgement criteria before being entitled to tribal political status.

d. The 1987 Amador County stipulation had no lawful effect on the B.V. land status at all.

In the present case Lucille Lucero and Enos Oliver (or his estate), the had owned all of the B.V. fee land in 1983, and they ***elected not to deed the land back to the federal government upon or after entry of the stipulated judgment in July 1983, entered in December 1983***. Rather they elected to retain it in fee and at all times thereafter treated the land as unrestricted fee land held in their private ownership until the unrelated land owner DonnaMarie Potts acquired and unified all of the fractionated title between 1986 and 1996. Potts then sought, with the help of outside non-Indian gambling investors, and also utilizing the erroneous actions and inaction of Defendants in violation of the A.P.A. and the I.G.R.A., to attempt to build and operate a class III gambling casino on that B.V. fee land site using a fictitious "Indian tribe" she created.

The mere fact that the Tillie-Hardwick stipulated judgment held that the rancherias had been unlawfully

terminated did not negate any and all other provisions in the stipulation and judgment entered by the court.

In the case of Medchoopa Indian Tribe of Chico Rancheria v. Schwarzenegger [U.S.D.C. E.D. CA. 2004] 684 F.Supp.2d 1042 this court held that the provisions in the stipulated judgment in that case, which provided the tribe would not build and operate a gambling casino, remained effective even though the tribe asserted that the Tillie-Hardwick case established the rancherias were unlawfully terminated. Notwithstanding the unlawful and overly broad termination provisions in the Rancheria Act, as discussed at length in the Tillie-Hardwick case, all other provisions contained in the 1983 stipulation and judgment still applied, including the provision that allowed retention of the fee lands by the owners who did not elect to reconvey their land to the U.S. in trust were valid.

Many, if not most of the Indian distributees elected to retain the land they received in unrestricted fee and declined to convey the land back to the federal government in trust during the two year period provided.

e. The County and the class plaintiffs in Tillie-Hardwick had no power, right or authority to create Indian lands or "Indian Country" or to change the fee status of the B.V. lands, and the 1987 stipulation did not and could not have amended or altered the 1983 stipulation and judgment which allowed retention of land in fee by the distributees. The court's later approval of the 1987 stipulation between Amador County and class plaintiffs added nothing to the legal issues of this case.

As hereinbefore set out, N.I.G.C. staff attorney Coleman offered no explanation how Amador County could reach an agreement in 1987 changing the fee status of the B.V. land to "Indian Country" or for that matter any class of Indian land or to be treated as if it were "Indian Country" without the consent and agreement of the fee owners of that land or the participation and approval of the federal government and agencies of the federal defendants who had reached a stipulated agreement and judgment in 1983, disposing of all issues except the definition of rancheria boundaries, and the need for any possible re-alignment of those boundaries by the court that

might be needed, and which could not occur or be determined until the 2-year reconveyance period had closed. In fact such an erroneous interpretation of the 1987 stipulation is at best, contradictory. If the 1983 judgment restored the B.V. rancheria land to any "reservation status" as asserted by N.I.G.C. attorney Penny Coleman in 2005 there would be no need for any reconveyance to trust of a further stipulation to treat it as "Indian Country" or to absolve collection of County taxes. It would already have been, in essence a class of "Indian Country" and untaxable and outside County jurisdiction. The purported 1987 stipulated judgment amounted to a collateral attack on the provisions in the 1983 stipulated judgment which allowed the fee owners and their heirs and descendants to retain their land in unrestricted fee. In effect, it would have involuntarily changed the status of their unrestricted fee lands without their consent and participation and was an attempt to nullify the choice they were given under the 1983 stipulated judgment to keep and retain their land in unrestricted fee. Such a significant involuntary change to the 1983 federal judgment without the participation of the

United States and without the consent of the affected fee land owners is impossible and unlawful.

f. Plaintiffs have standing to challenge the arbitrary and capricious acts of defendants which are contrary to law and unlawful under the I.G.R.A. and violate the A.P.A. as acts arbitrary, capricious and contrary to law.

Plaintiffs, Friends of Amador County [F.O.A.C.] are a large non-profit community group consisting of homeowners, businesses and residents of Amador County California who live and work adjacent to or near the proposed B.V. gambling casino site. They are concerned with the many negative impacts associated with a gambling casino that is imminently threatened to be built and operated in their community and in particular what amounts to an unlawful, unauthorized class III gambling casino on ineligible fee lands, by a fictitious "tribe" at the site specific Buena Vista property location in Amador County, California, a site which is and has been a sacred Indian burial ground for decades and is a scenic, rural and historic location. Community members and all interested parties in Amador

County have standing to challenge the arbitrary and capricious acts of Defendants and which will create negative impact and demands on community infrastructure and public services that must be paid for by them as taxpayers. [See Amador County v. Salazar [U.S.C.A. DC 2011] [See also Lujon v. Defenders of Wildlife [1992] 504 U.S. 555.] Recently the D.C. circuit Court of Appeals made it clear that prudential standing exists and is particularly important where the adverse impacts and demands upon infrastructure and community services result from a class III gambling casino in any neighborhood and which are well within the zone of interest of the community negatively impacted by such a casino. See Patchak v. Salazar [U.S.D.C.A. D.C. Circ. 2011] 632 F.3d 702, 704.

See also the pending case of Amador County v. Salazar supra [D.C. circuit 2011] where the court reversed and remanded the case to the District Court for further proceedings. 640 F.3d 370.

The defendants have approved a site specific gaming ordinance and site specific tribal-state compact for DonnaMarie Potts and this so-called Indian band or "tribe."

They did so without making the required Indian lands eligibility determination, required by law or requiring this putative tribe to meet the mandatory criteria to be acknowledged as a tribe as required by 25 C.F.R. part 83.

Defendants became aware of the false claims of DonnaMarie Potts to organize any Buena Vista Rancheria Of Me-Wuk Indians between 1996 and 2004. [See P.R.F.J.N. Docs. 26, 27.]

Almost all of these unlawful acts occurred in the furtherance of a plan to develop the B.V. gambling casino and occurred before Penny Coleman had even rendered her erroneous advisory opinion on 30 June 2005 that the land at B.V. was, in her opinion, "eligible Indian lands" for class II and class III Indian Gaming.

As evidenced by the letters from James Cason, acting Director of the D.O.I. to Oregon Governor, the Hon. Theodore Kullongoski and the letter from Michael Olsen, Chief Assistant Deputy of the D.O.I. to then speaker of the House of Representatives Hon. Dennis Hastert and the decision in North County Alliance v. Salazar [U.S. 9th Circ. 2009] 573 F.3d 738 supra the existence of a duty to determine whether land owned or held by any Indian tribe or individual is eligible for either class II or glass III gaming must be determined before

approving a site specific tribal gaming ordinance or a site specific tribal-state compact. Perhaps no greater authority than common sense would require that such an eligibility determination be made as soon as possible after any Indian tribe or band submits a site specific gaming ordinance or submits a site specific class III tribal-state gaming compact for approval under 25 U.S.C. 2710 d. Were that not the case, then as pointed out by justice Gould in the dissent in the N.C.A. v. Salazar case supra, such a gaming eligibility determination might never be made or could be made well after the tribe as already constructed and opened a casino at great expense and is subject to enforcement action, fines and criminal prosecution and the nearby community has suffered irreparable harm. [See for example the case of the United Keetoowah Band Indian tribe which has been operating it's Tahlequah casino on ineligible lands in violation of the I.G.R.A.] The recent decision by the National Indian Gaming Commission that the casino was not on eligible Indian lands after all, came 11 years after the status of the land had been challenged by the state of Oklahoma and 20 years after the tribe began gambling operations there.

In this case, after being informed of the ineligible status of the land by Plaintiffs F.O.A.C. and their counsel as early as 2006 and the questionable and the erroneous original "organization" of a tribe of "Indians" by DonnaMarie Potts, the defendants approved an amended compact in 2007 after the amended TEIR had been completed and a local MOU was proposed by the tribe for adoption over the community's objection stating the land was ineligible and stating the reasons.

g. The plaintiffs are entitled to summary judgment or partial summary adjudication of the question whether the B.V. site is eligible Indian lands and defendants approvals of class III gaming violate the I.G.R.A. and the A.P.A.

The I.G.R.A. has no internal statutory or administrative system to challenge arbitrary, erroneous, unlawful and capricious actions or inaction by the Secretary when such action (or inaction) occurs under the auspices of the I.G.R.A. Therefor a challenge under the A.P.A. 5 USC 701 et.seq. is the appropriate procedure.

In a case where essentially undisputed facts exist, a case can be resolved by Motion for Summary Judgment or

partial Summary Judgment or Adjudication as a matter of law based on those essentially undisputed facts and mixed questions of facts applying the correct interpretation of the law to the case.

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed.R.Civ. P. 56(a). The moving party must initially show the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 417, 323 (1986). See also Moden v. United States [D.C. Circ. 2005] 404 F.3d 1335. The opposing party must then show a genuine issue of fact for trial. Matsushita Elect. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The opposing party must present probative evidence to support its claim or defense. Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991). The court defers to neither party in resolving purely legal questions. See Bendixen v. Standard Ins. Co., 185 F.3d 939, 942 (9th Cir. 1999).

The title and history of the B.V. fee land is well documented. The legal impacts of the Tillie-Hardwick stipulated judgment are also matters which can be resolved

by this court as a matter of law or more accurately, the correct legal interpretation of that stipulated judgment.

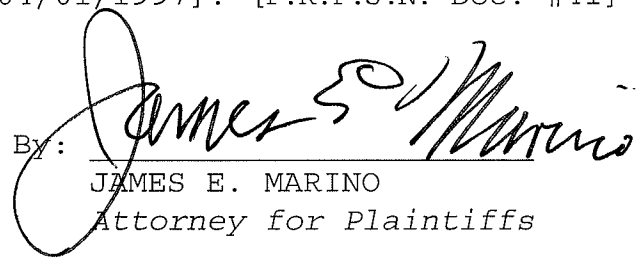
IV. CONCLUSION

A Summary declaratory judgment should be entered for Plaintiffs declaring the land at B.V. is not eligible for class II or class III gaming. Also the acts (or failure to act) by the Defendants in determining it to be eligible or failing to determine it is not eligible before approving a site specific gaming ordinance and tribal-state compact were violations of their duty under the I.G.R.A. and the A.P.A.

The question raised by Plaintiffs complaint as to the unlawful organization and acknowledgement of a "Buena Vista Rancheria of Me-Wuk Indians" by DonnaMarie Potts cannot be dismissed. Plaintiffs Bea Crabtree and June Geary are entitled to challenge that process or lack of proper process.

See the decision in Jeffrey Alan-Wilson v. Sacramento Area Director, Bureau of Indian Affairs [04/01/1997] P.R.F.J.N. Doc. 30 IBIA 241 [04/01/1997]. [P.R.F.J.N. Doc. #41]

Dated: 20 September 2011

By: 

JAMES E. MARINO
Attorney for Plaintiffs