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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 HOPLAND BAND OF POMO INDIANS;
12 ROBINSON RANCHERIA OF POMO
INDIANS OF CALIFORNIA; COYOTE
13 VALLEY BAND OF POMO INDIANS;
REDDING RANCHERIA; and RINCON
14 BAND OF LUISENO MISSION INDIANS OF
THE RINCON RESERVATION,
CALIFORNIA,

15 Plaintiffs,

16 vs.

17 KENNETH SALAZAR, in his official capacity)
18 as the Secretary of the United States Department)
of the Interior; LARRY ECHO HAWK, in his)
19 official capacity as the Assistant Secretary for)
Indian Affairs for the United States Department)
20 of the Interior; and DARREN CRUZAN, in his)
official capacity as the Deputy Bureau Director,)
21 Bureau of Indian Affairs, Office of Justice)
Services,)
22

23 Defendants.

Case No. 05 JCS
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND FOR
MONEY DAMAGES

24 INTRODUCTION

25 1. This is an action brought by the Hopland Band of Pomo Indians, the Robinson
26 Rancheria of Pomo Indians of California, the Coyote Valley Band of Pomo Indians, the
27 Redding Rancheria, and the Rincon Band of Luiseno Mission Indians of the Rincon
28 Reservation of California (collectively the "Tribes") against the Secretary of the United States

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND FOR MONEY
DAMAGES

1 Department of the Interior, Kenneth Salazar; the Assistant Secretary – Indian Affairs, Larry
2 Echo Hawk; and the Deputy Director, Bureau of Indian Affairs, Office of Justice Services,
3 Darren Cruzan, pursuant to the Indian Self Determination and Education Assistance Act, 25
4 U.S.C. § 450 et seq. (“ISDEAA”), the Indian Law Enforcement Reform Act (“ILERA”), 25
5 U.S.C. § 2801 et seq., the Tribal Law and Order Act of 2010 (“TLOA”), P.L. 111-211, 124
6 Stat. 2258, and the Administrative Procedure Act, 5 U.S.C. § 701, et seq. (“APA”). The Tribes
7 seek an order from the Court: (1) declaring that the defendants’ refusal to enter into contracts
8 for law enforcement services pursuant to the ISDEAA is arbitrary, capricious, and contrary to
9 law in violation of the APA, the Fifth Amendment to the United States Constitution, and the
10 defendants’ trust obligations; (2) declaring that the defendants are required by the ISDEAA to
11 contract with the Tribes to provide law enforcement services on their reservations and to
12 provide funding for those law enforcement services; (3) directing the defendants to enter into a
13 contract for law enforcement services pursuant to the ISDEAA with each of the Tribes and
14 provide funding for those contracts pursuant to a funding formula promulgated in compliance
15 with the requirements of the APA, and (4) award money damages to the Coyote Valley Band of
16 Pomo Indians, the Hopland Band of Pomo Indians, and the Robinson Rancheria in the amount
17 each Tribe requested in their proposed contracts to fund their respective ISDEAA law
18 enforcement services.

19 JURISDICTION

20 2. The Court’s jurisdiction over the Tribes’ claims is based upon the following:

21 (a) 28 U.S.C. § 1331, in that the Tribe’s claims arise under the Constitution
22 and laws of the United States;

23 (b) 28 U.S.C. § 1337, in that this action arises out of Acts of Congress
24 regulating commerce with Indian tribes, pursuant to the Indian Commerce Clause, Article I,
25 Section 8, cl. 3 of the United States Constitution;

26 (c) 28 U.S.C. § 1361, in that the Tribes seek to compel officers and
27 employees of the United States and its agencies to perform duties owed to the Tribes pursuant
28 to 25 U.S.C. § 450 m-1 and Executive Order 13175;

1 (d) 28 U.S.C. § 1362, in that the Tribes are all federally recognized Indian
2 tribes that assert that defendants' actions are inconsistent with the Constitution and laws of the
3 United States;

4 (e) 25 U.S.C. §1505 and 25 U.S.C. §450 m-1(a) in that the Tribes are
5 federally recognized Indian tribes residing within the territorial limits of the United States
6 whose claims arise under the Constitution, laws or treaties of the United States, or Executive
7 orders of the President, the Tribes assert that the defendants violated 25 U.S.C. §450f by
8 declining to enter into self-determination contracts with the Tribes for law enforcement
9 services, and the Tribes seek damages and an order to compel the defendants to approve and
10 fund the contracts for law enforcement services submitted by the Tribes, and

11 (f) Pursuant to ISDEAA, 25 U.S.C. § 450f(b)(3), the Tribes are not required
12 to exhaust any available administrative remedies. Plaintiff Hopland Band of Pomo Indians has,
13 nevertheless, exhausted the available administrative remedy by engaging in an informal hearing
14 before the Secretary of the Interior's designated representative, who upheld the defendants'
15 decision.

16 VENUE

17 3. Venue is proper in the Northern District of California, pursuant to 28 U.S.C. §
18 1391(e), in that the defendants are officers of the United States acting in their official capacity
19 and a substantial part of the events or omissions giving rise to the Tribes' claims occurred in
20 this district.

21 PARTIES

22 4. The Hopland Band of Pomo Indians ("Hopland Band") is a federally recognized
23 Indian tribe organized under the provisions of a written constitution. The Hopland Band is the
24 beneficial owner of the Hopland Indian Reservation, which comprises approximately 2007
25 acres of trust and fee land located in Mendocino County, California. Title to the Hopland
26 Band's reservation trust lands is owned by the United States of America in trust for the
27 Hopland Band. The Hopland Band exercises powers of self-government on the Hopland
28 Indian Reservation through its Tribal Council, consistent with its quasi-sovereign status.

1 5. Plaintiff, Robinson Rancheria of Pomo Indians of California ("Robinson
2 Rancheria"), is a federally recognized Indian tribe organized under the provisions of a written
3 constitution which has been approved by the Secretary of the Interior. The Robinson Rancheria
4 is the beneficial owner of the Robinson Rancheria, which comprises approximately 107 acres of
5 land located in Lake County, California. Title to the Robinson Rancheria's reservation trust
6 lands is owned by the United States of America in trust for the Robinson Rancheria. The
7 Robinson Rancheria exercises powers of self-government on the Robinson Rancheria through
8 its Business Council, consistent with its quasi-sovereign status.

9 6. Plaintiff, Coyote Valley Band of Pomo Indians ("Coyote Valley Band"), is a
10 federally recognized Indian tribe organized under the provisions of a written constitution. The
11 Coyote Valley Band is the beneficial owner of the Coyote Valley Indian Reservation, which
12 comprises approximately 70 acres of land located in Mendocino County, California. Title to
13 the Coyote Valley Band's reservation trust lands is owned by the United States of America in
14 trust for the Coyote Valley Band. The Coyote Valley Band exercises powers of self-
15 government on the Coyote Valley Indian Reservation through its Tribal Council, consistent
16 with its quasi-sovereign status.

17 7. Plaintiff, Redding Rancheria ("Redding Rancheria"), is a federally recognized
18 Indian tribe organized under the provisions of a written constitution which has been approved
19 by the Secretary of the Interior. The Redding Rancheria is the beneficial owner of the Redding
20 Indian Rancheria, which comprises approximately 31 acres of land located in Shasta County,
21 California. Title to all of the Redding Rancheria's reservation trust lands is owned by the
22 United States of America in trust for the Redding Rancheria. The Redding Rancheria exercises
23 powers of self-government on the Redding Indian Rancheria through its Tribal Council,
24 consistent with its quasi-sovereign status.

25 8. Plaintiff, Rincon Band of Luiseno Mission Indians of the Rincon Reservation
26 ("Rincon Band"), is a federally recognized Indian tribe organized pursuant to Articles of
27 Association passed and approved by the Commissioner of Indian Affairs on March 15, 1960.
28 The Rincon Band is the beneficial owner of the Rincon Reservation, which comprises

1 approximately 4,500 acres of land located in San Diego County, California. Title to the Rincon
2 Band's reservation trust lands is owned by the United States of America in trust for the Rincon
3 Band. The Rincon Band exercises powers of self-government on the Rincon Reservation
4 through the Rincon Tribal Business Committee, also referred to as the Rincon Tribal Council,
5 consistent with its quasi-sovereign status.

6 9. Defendant Kenneth Salazar ("Secretary") is the Secretary of the United States
7 Department of the Interior ("DOI"). He is an officer and employee of the United States and is
8 sued in his official capacity.

9 10. Defendant Larry Echo Hawk ("Assistant Secretary") is the Assistant Secretary –
10 Indian Affairs for the DOI. He is an officer and employee of the United States and is sued in
11 his official capacity.

12 11. Defendant Darren Cruzan ("Deputy Director") is the Deputy Bureau Director,
13 Bureau of Indian Affairs, Office of Justice Services ("OJS") for the DOI. He is an officer and
14 employee of the United States and is sued in his official capacity.

15 GENERAL ALLEGATIONS

16 12. In 1953, Congress enacted 18 U.S.C. § 1162 ("P.L. 280"), which transferred
17 limited criminal jurisdiction over certain offenses committed on Indian reservations to certain
18 states, including California, Minnesota, Nebraska, Oregon, Wisconsin, Nevada, South Dakota,
19 Washington, Florida, Idaho, Montana, North Dakota, Arizona, Iowa, and Utah ("P.L. 280
20 States").

21 13. On January 4, 1975, Congress enacted the ISDEAA. One of the primary
22 purposes of the ISDEAA was to allow federally recognized Indian tribes to contract with the
23 DOI to take over operation of those federal service programs that the DOI maintains and
24 operates for the benefit of Indians and Indian tribes.

25 14. Under the ISDEAA, any federally recognized Indian tribe that seeks to contract a
26 service performed by the federal government is required to submit an application to do so to
27 the Secretary, pursuant to 25 U.S.C. § 450f(a)(1). These contracts are referred to as "638
28 Contracts" ("638 Contracts"). A proposed 638 Contract must include the standards under

1 which the tribal government will operate the contracted program. 25 U.S.C. § 450f(a)(2).

2 15. Pursuant to the ISDEAA, the Secretary has ninety (90) days from receipt of a
3 request from a tribe to enter into a 638 Contract to review and approve or disapprove the
4 proposed contract. 25 U.S.C. § 450f(a)(2). The Secretary has a mandatory, non-discretionary
5 duty to approve a request to enter into a 638 Contract unless:

6 the Secretary provides written notification to the applicant that contains a
7 specific finding that clearly demonstrates that, or that is supported by, a
8 controlling legal authority that—(A) the service to be rendered to the Indian
9 beneficiaries of the particular program or function to be contracted will not be
10 satisfactory; (B) adequate protection of trust resources is not assured; (C) the
11 proposed project or function to be contracted for cannot be properly completed
12 or maintained by the project contract; (D) the amount of funds proposed under
the contract is in excess of the applicable funding level for the contract . . . ; or
(E) the program, function, service, or activity . . . that is the subject of the
proposal is beyond the scope of programs, functions, services, or activities
covered under . . . [25 U.S.C. §450f] . . . because the proposal includes activities
that cannot lawfully be carried out by the contractor.

13 25 U.S.C. § 450f(2).

14 16. The Bureau of Indian Affairs (“BIA”) is an agency of the DOI. Within the BIA
15 is the Office of Justice Services (“OJS”), which has responsibility for carrying out the law
16 enforcement functions of the Secretary on Indian reservations and implementing the provisions
17 of the ILERA.

18 17. Under the ILERA, the Secretary is authorized to enter into deputation
19 agreements with Indian tribes to enforce federal law and the laws of the tribes on their Indian
20 reservations.

21 18. As early as 1977, and continuing to the present, the BIA has contracted with
22 Indian tribes pursuant to the ILERA and issued Special Law Enforcement Commissions
23 (“SLECs”) to the law enforcement officers of a number Indian tribes within the State of
24 California, including, but not limited to, the Hopland Band, and the Robinson Rancheria. The
25 SLECs allow law enforcement officers of those Indian tribes to enforce certain federal and
26 tribal laws, including, but not limited to, Title 18 of the United States Code §§1154, 1155,
27 1156, 1157, 1158, 1159, 1161, 1163, 1164, and 1165, as well as tribal hunting and fishing
28 ordinances. Once the tribal law enforcement officers have been commissioned, the OJS relies

1 on them to serve as federal law enforcement officers, with the authority to enforce all applicable
2 federal laws within the Indian reservations that they police.

3 19. Each year, Congress appropriates funds for the BIA to provide law enforcement
4 services to Indian tribes within Indian country. The BIA allocates the funds Congress
5 appropriates for law enforcement services to various Indian tribes throughout the United States,
6 including a number of tribes in P.L. 280 States, including some tribes with reservation land
7 located in the State of California.

8 20. The DOI provides funding for law enforcement services to some tribes in P.L.
9 280 States through 638 Contracts that the DOI has entered into with those tribes.

10 21. Pursuant to Executive Order 13175, the Secretary and the BIA are required to
11 consult with any Indian tribe that would be affected by a policy proposed by the Secretary or the
12 BIA, prior to adopting and implementing that policy.

13 22. In 2010, Congress enacted the Tribal Law and Order Act. Among the stated
14 purposes of the TLOA are: (1) to increase coordination and communication among federal,
15 state, tribal, and local law enforcement agencies, and (2) to empower tribal governments to
16 provide public safety and law enforcement services in tribal communities.

17 23. The Secretary has never promulgated regulations that restrict the allocation of
18 funding for law enforcement services pursuant to 25 U.S.C. § 450k to non-P.L. 280 States. The
19 OJS has adopted an unwritten policy ("Policy") not to provide any money appropriated by
20 Congress for law enforcement services by 638 Contract or otherwise to tribes in the State of
21 California, on the grounds that California is a P.L. 280 State. To the extent that the Secretary
22 has adopted the Policy, the Policy was not implemented through the formal rule making
23 process required under 5 U.S.C. § 553 of the Administrative Procedure Act.

24 **ALLEGATIONS RELATING TO THE HOPLAND BAND**

25 24. Pursuant to the authority granted to it under the Hopland Constitution, the
26 Hopland Tribal Council enacted an ordinance establishing the Hopland Tribal Police
27 Department ("Hopland Police Ordinance"). True and correct copies of the Hopland Police
28 Ordinance No. 02-07-05, as subsequently amended by Ordinance No. 04-12-22, Ordinance No.

04-12-22 (Revised 8/2/2005), and Ordinance No. 07-03-23 are hereby incorporated by this reference as if set forth here in full and attached hereto as **Exhibit A**.

25. On or about July 31, 2003, pursuant to the ISDEAA, the Hopland Band submitted to the BIA a 638 Contract to allow the Tribe to provide law enforcement services to the Hopland Indian Reservation. The proposed 638 Contract did not include a request for funding for the program from the United States.

26. In a letter dated October 28, 2003, the BIA denied the Hopland Band's request.

27. In January 2004, the Hopland Band filed suit against the Secretary and other federal officials in the United States District Court for the Northern District of California seeking a determination from the Court that the DOI had a mandatory duty under the ISDEAA to enter into a 638 Contract with the Hopland Band for law enforcement services.

28. In July 2004, this Court concluded that law enforcement services are a contractible program under the ISDEAA and denied the Secretary's motion to dismiss the Hopland Band's lawsuit, *Hopland Band of Pomo Indians v. Norton*, 324 F. Supp. 2d 1067 (N.D. Cal. 2004). Pursuant to a settlement agreement in the lawsuit, the Department of the Interior entered into a 638 Contract for law enforcement services in the form of a Deputation Agreement with the Hopland Band and subsequently granted Special Law Enforcement Commissions to qualified officers of the Hopland Police Department. A true and correct copy of the Hopland Band's 638 Contract/Deputation Agreement is hereby incorporated by this reference as if set forth here in full and attached hereto as **Exhibit B**.

29. Since the District Court's ruling in *Hopland v. Norton*, the Hopland Band has provided law enforcement services as a 638 Contract/Deputation Agreement program on the Hopland Indian Reservation.

30. In February 2009, the Hopland Band submitted for approval an amendment to the its 638 Contract/Deputation Agreement that included a request for funding of \$270,347.00. A true and correct copy of the amendment to the Tribe's 638 Contract/Deputation Agreement that included a request for funding is hereby incorporated by this reference as if set forth here in full and attached hereto as **Exhibit C**.

1 31. In a letter dated May 20, 2009, the OJS denied the Hopland Band's request to
2 amend the 638 Contract/Deputation Agreement. In the denial letter, the OJS stated that it
3 allocated no funding for law enforcement programs for California tribes because California is a
4 Public Law 280 state. A true and correct copy of the letter dated May 20, 2009 from the OJS
5 to the Hopland Band is hereby incorporated by this reference as if set forth here in full and
6 attached hereto as **Exhibit D**.

7 32. The OJS provides law enforcement funding to Indian tribes in some P. L. 280
8 states, including funding for the Washoe, Fort Mojave, and Colorado River Tribes, which have
9 portions of their reservations located in California. A true and correct copy of a funding chart
10 from the OJS showing the tribes to which it provides law enforcement funding is hereby
11 incorporated by this reference as if set forth here in full and attached hereto as **Exhibit E**.

12 33. In a response to DOI Field Solicitor William Quinn's request for information
13 from the OJS on whether the OJS had developed a funding formula for the allocation of law
14 enforcement funds, the Strategic Planning Officer for the OJS replied that there was no
15 formula. True and correct copies of the emails between William Quinn and officials of the OJS
16 confirming that the OJS has no equitable funding formula for allocating among Indian tribes
17 throughout the United States funds Congress appropriates for law enforcement services are
18 hereby incorporated by this reference as if set forth here in full and attached hereto as **Exhibit**
19 **F**.

20 34. In a letter dated June 4, 2009, the Hopland Band responded to the OJS's refusal
21 to agree to the amendment by requesting an informal conference between representatives of the
22 Tribe and representatives of the OJS who had line-item authority to allow any agreement
23 reached at the meeting to be implemented immediately. A true and correct copy of the letter
24 dated June 4, 2009, from the Hopland Band is hereby incorporated by this reference as if set
25 forth here in full and attached hereto as **Exhibit G**.

26 35. On July 16, 2009, Benjamin H. Nuvamsa, the Secretary of the Interior's
27 Designated Representative, and representatives of the Hopland Band held an informal
28 conference in Santa Rosa, California. A true and correct copy of the transcript of the hearing

1 before the Secretary of the Interior's Designated Representative is incorporated by this
2 reference as if set forth here in full and attached hereto as **Exhibit H**.

3 36. At the hearing, then OJS Director W. Patrick Ragsdale stated that the OJS does
4 not allocate any funds to California tribes for law enforcement services because California is a
5 P.L. 280 State, but admitted that the OJS enters into 638 Contracts for law enforcement
6 services with tribes in P.L. 280 States other than California.

7 37. On August 10, 2009, Nuvamsa issued a Recommended Decision upholding the
8 decision of the BIA to decline to enter into a 638 Contract for law enforcement services with
9 the Tribe. A true and correct copy of the Recommended Decision dated August 10, 2009, is
10 incorporated by this reference as if set forth here in full and attached hereto as **Exhibit I**.

11 38. In a letter dated December 14, 2010, the Hopland Band submitted an amendment
12 to its 638 Contract/Deputation Agreement, pursuant to the ISDEAA. That proposed
13 amendment did not include a request for funding pursuant to the ISDEAA.

14 39. In a letter dated March 30, 2011, Selanhongva McDonald, Special Agent in
15 Charge, District 3, OJS, denied approval of the amendments to the 638 Contract/Deputation
16 Agreement on the ground that it did not contain a request for funding, which, he maintained, is
17 an essential element of a 638 Contract. A true and correct copy of the March 30, 2011, letter
18 from Selanhongva McDonald to Shawn Pady is incorporated by this reference as if set forth
19 here in full and attached hereto as **Exhibit J**.

20 **ALLEGATIONS RELATING TO THE ROBINSON RANCHERIA**

21 40. Pursuant to the authority granted to it under the Robinson Rancheria
22 Constitution, the Robinson Rancheria Citizens Business Council has enacted an ordinance
23 establishing the Robinson Rancheria Tribal Police Department ("Robinson Police Ordinance").
24 A true and correct copy of the Robinson Police Ordinance is hereby incorporated by this
25 reference as if set forth here in full and attached hereto as **Exhibit K**.

26 41. On May 11, 2009, the Robinson Rancheria entered into a Deputation Agreement
27 with the OJS, pursuant to the ILERA, in which the OJS agreed to issue Special Law
28 Enforcement Commissions to qualified tribal law enforcement officers. A true and correct copy

1 of the deputation agreement is hereby incorporated by this reference as if set forth here in full
2 and attached hereto as **Exhibit L**.

3 42. On or about October 25, 2010, pursuant to the ISDEAA, the Robinson
4 Rancheria submitted to the OJS a 638 Contract to provide law enforcement services to the
5 Robinson Rancheria. The proposed 638 Contract included a request for funding of \$703,033 for
6 the program from the Secretary. The Robinson Rancheria also submitted a revised Deputation
7 Agreement as part of the 638 Contracting process. A true and correct copy of the Robinson
8 Rancheria's proposed 638 Contract and Deputation Agreement are hereby incorporated by this
9 reference as if set forth here in full and attached hereto as **Exhibit M**.

10 43. In a letter dated December 28, 2010, the OJS denied the Robinson Rancheria's
11 request. The letter stated that the OJS did not allocate any funding for law enforcement
12 programs in California because it was a P.L. 280 State and, on that basis, it denied the request.
13 A true and correct copy of the letter from the OJS to the Tribe denying the Robinson
14 Rancheria's request is hereby incorporated by this reference as if set forth here in full and
15 attached hereto as **Exhibit N**.

16 **ALLEGATIONS RELATING TO THE COYOTE VALLEY BAND**

17 44. Pursuant to the authority granted to it under the Coyote Valley Band's
18 Constitution, the Coyote Valley Tribal Council has enacted an Ordinance establishing the
19 Coyote Valley Tribal Police Department ("Coyote Valley Police Ordinance"). A true and
20 correct copy of the Ordinance establishing the Coyote Valley Tribal Police Department is
21 hereby incorporated by this reference as if set forth here in full and attached hereto as **Exhibit**
22 **O**.

23 45. On or about January 26, 2011, pursuant to the ISDEAA, the Coyote Valley Band
24 submitted to the BIA and the OJS a 638 Contract for law enforcement services. The proposed
25 638 Contract included a request for funding of \$398,235 for the program from the Secretary.
26 The Coyote Valley Band also submitted a proposed Deputation Agreement between the OJS
27 and the Coyote Valley Band, pursuant to the ILERA in which the OJS would agree to issue
28 Special Law Enforcement Commissions to qualified tribal law enforcement officers. A true

1 and correct copy of the proposed 638 Contract and proposed Deputation Agreement submitted
2 by the Tribe to the BIA and the OJS is hereby incorporated by this reference as if set forth here
3 in full and attached hereto as **Exhibit P**.

4 46. In a letter dated March 14, 2011, the OJS denied the Coyote Valley Band's
5 request for funding on the grounds that the OJS did not allocate any funding for law
6 enforcement programs in California because it was a P.L. 280 State. A true and correct copy of
7 the letter from the OJS to the Tribe denying the Coyote Valley Band's request is hereby
8 incorporated by this reference as if set forth here in full and attached hereto as **Exhibit Q**.

9 **ALLEGATIONS RELATING TO THE REDDING RANCHERIA**

10 47. On May 30, 2006, the Redding Rancheria Tribal Council established the
11 Redding Rancheria Law Enforcement Department.

12 48. On or about November 13, 2008, the Redding Rancheria and the United States
13 entered into a self governance compact ("Self-Governance Compact"), pursuant to Title IV of
14 the ISDEAA. The governmental programs and activities for which the Tribe assumed
15 responsibility include law enforcement.

16 49. Since entering into the Self-Governance Compact, the Tribe has been unable to
17 funds its Law Enforcement Department because it lacks the amount of funding necessary to
18 adequately fund its law enforcement activities.

19 50. The Redding Rancheria's Tribal Council desires to amend its Self-Governance
20 Compact to include funding for law enforcement services from the funds Congress appropriates
21 each year and makes available to the OJS for law enforcement services, but has not submitted a
22 proposed amendment to its Self-Governance Compact because the Redding Rancheria's Tribal
23 Council has concluded that to do so would be futile, based on the adoption of the Policy by the
24 OJS and the denial of approval of the 638 Contracts submitted by co-plaintiffs Hopland Band,
25 Robinson Rancheria, and Coyote Valley Band.

26 **ALLEGATIONS RELATING TO THE RINCON BAND**

27 51. The Rincon Band has established a tribal law enforcement agency. The Rincon
28 Band's Tribal Council desires to enter into a 638 Contract for law enforcement services and a

1 Deputation Agreement with the OJS as part of the 638 Contracting process.

2 52. The Rincon Band's Tribal Council, however, has not submitted a proposed 638
3 Contract for law enforcement services or a proposed Deputation Agreement to the OJS, because
4 the Rincon Band's Tribal Council has concluded that to do so would be futile, based on the
5 adoption of the Policy by the OJS and the denial of approval of the 638 Contracts for law
6 enforcement services submitted by co-plaintiffs Hopland Band, Robinson Rancheria, and
7 Coyote Valley Band.

8 **FIRST CAUSE OF ACTION**

9 **[Violation of the Indian Self-Determination and Education Assistance Act]**

10 53. The Tribes reallege each of the allegations set forth in paragraphs 1-52 above
11 and, by this reference, incorporate each such allegation herein as if set forth in full.

12 54. Title 25 of the United States Code §450f(a)(2) mandates that the Secretary of the
13 Interior enter into a contract with a federally recognized Indian tribe to allow the contracting
14 tribe to perform any program which the Secretary is authorized to administer:

15 for the benefit of Indians because of their status as Indians without regard to the
16 agency or office of . . . the Department of the Interior within which it is
17 performed," unless the Secretary finds that: "(A) the service to be rendered to
18 the Indian beneficiaries of the particular program . . . to be contracted will not be
19 satisfactory; (B) adequate protection of trust resources is not assured; (C) the
20 proposed project . . . to be contracted for cannot be properly completed or
21 maintained by the proposed contract; (D) the amount of funds proposed under
22 the contract is in excess of the applicable funding levels; or (E) the program . . .
23 that is the subject of the proposal is beyond the scope of programs . . . covered
24 under . . . [25 U.S.C. §450f] because the proposal includes activities that cannot
25 lawfully be carried out by the contractor.

26 55. The BIA has entered into 638 Contracts to provide funding for law enforcement
27 services with Indian tribes throughout the United States, including tribes in P.L. 280 States
28 other than California, and has provided funding for those 638 Contracts. The Hopland Band,
29 Robinson Rancheria, and Coyote Valley Band submitted proper 638 Contracts for funding of
30 these law enforcement services to the OJS under 25 U.S.C. §450f, et seq.

31 56. In response to the Hopland Band, Robinson Rancheria, and Coyote Valley
32 Band's requests for 638 Contracts under 25 U.S.C. §450f, the defendants declined to enter into
33 638 Contracts with the Tribes, on the grounds that no funding has been allocated for law

1 enforcement services in California because it is a P.L. 280 State and, therefore, no money is
2 available for 638 Contracting.

3 57. In response to the Hopland Band, Robinson Rancheria and Coyote Valley
4 Band's requests to contract under 25 U.S.C. §450f, that specifically did not include a request
5 for funding, the defendants declined to enter into 638 Contracts with the Hopland Band,
6 Robinson Rancheria, and Coyote Valley Band, on the grounds that, since no funding was
7 requested, the Secretary could not enter into the 638 Contracts because the application lacked
8 an essential component of the requirements for 638 Contracts, i.e., a request for funding.

9 58. Unless the defendants are provisionally and permanently restrained and enjoined
10 from declining to enter into 638 Contracts for BIA law enforcement services with the Tribes,
11 the Tribes will suffer severe and irreparable injury, in that the Tribes will be unable to provide
12 the level of law enforcement service on the Tribes' reservations that is necessary to combat
13 crime on the reservations in direct violation of the ISDEAA.

14 59. An actual controversy exists between the Tribes and the defendants in that the
15 Tribes contend that the failure of the defendants to enter into 638 Contracts with the Hopland
16 Band, Robinson Rancheria, and Coyote Valley Band constitutes arbitrary and capricious action
17 and is an abuse of discretion, which is in direct violation of the provisions of the Indian Self-
18 Determination and Education Assistance Act, while the defendants claim their actions are
19 lawful.

20 WHEREFORE, the Tribes pray as hereinafter set forth.

21 **SECOND CAUSE OF ACTION**

22 **[Violation of the Administrative Procedure Act, 5 U.S.C. § 702]**

23 60. The Tribes reallege each of the allegations set forth in paragraphs 1-59 above
24 and, by this reference, incorporates each such allegation herein as if set forth in full.

25 61. The defendants have a statutory obligation to contract with federally recognized
26 Indian tribes to allow tribes to perform any programs or services provided by the BIA to Indians
27 or Indian tribes, unless the Secretary makes a specific finding that clearly demonstrates that, or
28 controlling legal authority that supports that, one of the five stated reasons for denial of a 638

1 Contract is present. The BIA provides law enforcement services to Indians and Indian tribes
2 through its BIA police and through tribal police to whom the BIA has issued SLECs.
3 Notwithstanding this statutory obligation, the Secretary, acting through officers of the BIA and
4 OJS, has refused to contract with the Hopland Band, Robinson Rancheria, and Coyote Valley
5 Band to provide law enforcement services on the Tribes' Reservations, even though those
6 Tribes have submitted proposed 638 Contracts that conform to all of the requirements of 25
7 U.S.C. §450, et seq.

8 62. The Secretary's refusal to enter into the proposed 638 Contracts is based on the
9 Secretary's refusal to allocate funding for law enforcement services for tribes in P.L. 280 States.
10 The Secretary's basis for not approving the proposed 638 Contracts is not set forth in 25 U.S.C.
11 §450f. The Secretary's refusal is in violation of 25 U.S.C. §450f and Executive Order 13175
12 and is, therefore, arbitrary, capricious, and contrary to applicable law, in violation of the
13 Administrative Procedures Act.

14 63. An actual and substantial controversy exists between the Tribes and the
15 defendants in that the Tribes contend that defendants' actions are arbitrary, capricious, and
16 contrary to the law, while the defendants contend that their actions are not arbitrary, are within
17 allowable discretion, and are otherwise consistent with applicable law.

18 64. Unless the defendants and each of them are provisionally and permanently
19 restrained and enjoined from declining to enter into 638 Contracts with the Tribes for law
20 enforcement services and funding to provide those services based on an arbitrary policy of
21 denying funding for such programs, in violation of the APA, the Tribes and their members will
22 be deprived of the same level of law enforcement services presently provided by the BIA to
23 other tribes, including tribes with Reservation trust lands in California.

24 WHEREFORE, the Tribes pray as hereinafter set forth.

25 **THIRD CAUSE OF ACTION**

26 **[Violation of the 25 U.S.C. § 450k]**

27 65. The Tribes reallege each of the allegations set forth in paragraphs 1-64 above
28 and, by this reference, incorporate each such allegation herein as if set forth in full.

COMPLAINT FOR DECLARATORY AND
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DAMAGES

1 66. The defendants, in refusing to enter into a 638 Contract for law enforcement
2 services and funding for those services with the Hopland Band, the Coyote Valley Band, and
3 the Robinson Rancheria, stated that the basis for the refusal to enter into those 638 Contracts
4 was that BIA does not allocate any funding for law enforcement services for tribes in California
5 because it is a P.L. 280 State.

6 67. The DOI has never promulgated any formal regulations that restrict allocations
7 of BIA funding for law enforcement services to Indian tribes in non-P.L. 280 States. The BIA's
8 refusal to allocate funding for law enforcement services to Indian tribes in P.L. 280 States,
9 therefore, constitutes a Policy of the BIA.

10 68. 25 U.S.C. § 450k(a)(1) specifically provides that the Secretary is not authorized
11 to "impose any nonregulatory requirement, relating to self-determination contracts or the
12 approval, award, or declination of such contracts" other than regulations specifically provided
13 for in 25 U.S.C. § 450k.

14 69. The BIA's informal, unannounced Policy of refusing to allocate funding for law
15 enforcement services to Indian tribes in P.L. 280 States constitutes a "a nonregulatory
16 requirement, relating to self-determination contracts or the approval, award, or declination of
17 such contracts" in violation of 25 U.S.C. § 450k(a)(1).

18 70. An actual and substantial controversy exists between the Tribes and the
19 defendants in that the Tribes contend that defendants' actions are in violation of 25 U.S.C. §
20 450k(a)(1), while the defendants contend that their actions are not in violation of 25 U.S.C. §
21 450k(a)(1).

22 71. Unless the defendants and each of them are provisionally and permanently
23 restrained and enjoined from imposing nonregulatory requirements relating to self-
24 determination contracts or the approval, award, or declination of such contracts, the Tribes and
25 their members will be deprived of the same level of law enforcement services presently
26 provided by the BIA to other tribes, including tribes with Reservation trust lands in California.

27 WHEREFORE, the Tribes pray as hereinafter set forth.
28

FOURTH CAUSE OF ACTION

[Violation of the Administrative Procedure Act]

72. The Tribes reallege each of the allegations set forth in paragraphs 1-71 above and, by this reference, incorporate each such allegation herein as if set forth in full.

73. The defendants, in refusing to enter into 638 Contracts for law enforcement services with the Hopland Band, the Coyote Valley Band, and the Robinson Rancheria, stated that the basis for the refusal to enter into those 638 Contracts was that BIA does not allocate any funding for law enforcement services for tribes in California because it is a P.L. 280 State.

74. The DOI has never promulgated any formal regulations that restrict allocations of BIA funding for law enforcement services to Indian tribes in non-P.L. 280 States.

75. 25 U.S.C. § 450k(a)(1) specifically provides that the Secretary is not authorized to “impose any nonregulatory requirement, relating to self-determination contracts or the approval, award, or declination of such contracts.”

76. The BIA’s refusal to allocate funding for law enforcement services to Indian tribes in P.L. 280 States constitutes the imposition of a “nonregulatory requirement, relating to self-determination contracts or the approval, award, or declination of such contracts” in violation of 25 U.S.C. § 450(k) and is, therefore, contrary to applicable law, in violation of the Administrative Procedures Act.

77. An actual and substantial controversy exists between the Tribes and the defendants in that the Tribes contend that defendants’ actions are in violation of the APA, while the defendants contend that their actions are not in violation of the APA.

78. Unless the defendants and each of them are provisionally and permanently restrained and enjoined from imposing regulatory requirements relating to self-determination contracts or the approval, award, or declination of such contracts, the Tribes will be deprived of the same level of law enforcement services presently provided by the BIA to other tribes, including tribes with Reservation trust lands in California.

WHEREFORE, the Tribes pray as hereinafter set forth.

FIFTH CAUSE OF ACTION

[Violation of the Administrative Procedure Act, 5 U.S.C. § 553]

79. The Tribes reallege each of the allegations set forth in paragraphs 1-78 above and, by this reference, incorporate each such allegation herein as if set forth in full.

80. The defendants, in refusing to enter into 638 Contracts for law enforcement services with the Hopland Band, the Coyote Valley Band, and the Robinson Rancheria, stated that the basis for the refusal to enter into those 638 Contracts was that BIA does not allocate any funding for law enforcement services for tribes in California because it is a P.L. 280 State.

81. The DOI has never promulgated any formal regulations that restrict allocations of BIA funding for law enforcement services to Indian tribes in non-P.L. 280 States. The Department's Policy of restricting allocations of BIA funding for law enforcement services to Indian tribes in non-P.L. 280 States, however, has the effect of a regulation imposing those restrictions.

82. 5 U.S.C. § 553 requires that, in order to promulgate regulations, the Secretary must provide notice of proposed rule making, including reference to the legal authority under which the rule is proposed, and must give interested persons an opportunity to participate in the rule making.

83. The BIA's refusal to allocate funding for law enforcement services to Indian tribes in P.L. 280 States without meeting the notice and an opportunity to participate requirements of 5 U.S.C. § 553 constitutes a violation of 5 U.S.C. § 553.

84. An actual and substantial controversy exists between the Tribes and the defendants in that the Tribes contend that defendants' actions are in violation of 5 U.S.C. § 553, while the defendants contend that their actions are not in violation of 5 U.S.C. § 553.

85. Unless the defendants and each of them are provisionally and permanently restrained and enjoined from imposing regulatory requirements relating to self-determination contracts or the approval, award, or declination of such 638 Contracts, on the Tribes and their members without engaging in the rule making process set forth in 5 U.S.C. § 553, the Tribes will be deprived of the rights and protections provided by the rule making process set forth in 5

1 U.S.C. § 553.

2 WHEREFORE, the Tribes pray as hereinafter set forth.

3 **SIXTH CAUSE OF ACTION**

4 **[Violation of the Fifth Amendment]**

5 86. The Tribes reallege each of the allegations set forth in paragraphs 1-85 above
6 and, by this reference, incorporate each such allegation herein as if set forth in full.

7 87. As federally recognized Indian tribes, the Tribes are eligible to contract with the
8 BIA pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §450,
9 et seq., to perform any services that the BIA provides to Indian tribes because of their status as
10 federally recognized Indian tribes.

11 88. Currently, and at the times that the Hopland Band, the Robinson Rancheria, and
12 the Coyote Valley Band submitted their requests for 638 Contracts for law enforcement
13 services, the BIA provided the law enforcement services that the Tribes sought to contract for
14 through its BIA police and its SLEC tribal police officers throughout the United States,
15 including the State of California, and provided funding for such services to Indian tribes in non-
16 P.L. 280 States and to some tribes in P.L. 280 States.

17 89. By declining to enter into the 638 Contracts with the Hopland Band, the
18 Robinson Rancheria, and the Coyote Valley Band and refusing to allow the Tribes to provide
19 those law enforcement services that the BIA provides or that 638 Contracts with other Indian
20 tribes provide, the defendants have acted arbitrarily and have unreasonably discriminated
21 against the Tribes and their members, in violation of the Fifth Amendment to the United States
22 Constitution.

23 90. Unless the defendants are provisionally and permanently restrained and enjoined
24 from declining to enter into 638 Contracts with the Tribes to provide law enforcement services
25 on the Tribes' Reservations under the terms of the Tribes' proposed 638 Contracts, the Tribes
26 will suffer severe and irreparable injury for which the Tribes have no plain, speedy, or adequate
27 remedy at law, in that the Tribes will be deprived of the right to enter into 638 Contracts to
28 perform BIA law enforcement services that are available to other federally recognized Indian

1 tribes in the United States, thereby depriving the Tribes of the means of providing effective law
2 enforcement services to their members and all persons who live, work, or visit the Tribes'
3 Reservations.

4 91. An actual and substantial controversy exists between the Tribes and the
5 defendants in that the Tribes contend that the defendants' actions, as set forth above, are
6 discriminatory and, therefore, are in violation of the Fifth Amendment to the United States
7 Constitution, while defendants contend that their actions do not constitute such a violation.

8 WHEREFORE, the Tribes pray as hereinafter set forth.

9 **SEVENTH CAUSE OF ACTION**

10 **[Breach of Trust]**

11 92. The Tribes reallege each of the allegations set forth in paragraphs 1-91 above
12 and, by this reference, incorporate each allegation herein as if set forth in full.

13 93. Where the DOI, by the adoption of 25 C.F.R. § 12.12, which implements the
14 Indian Law Enforcement Reform Act of 1990, 25 U.S.C. § 2801, et seq., has established the
15 policy that "[i]t is not fair to law abiding citizens of Indian country to have anything less than a
16 professional law enforcement program in their community," and, at the same time, has thwarted
17 effective law enforcement by: (1) refusing to enter into 638 Contracts with the Tribes to provide
18 law enforcement services that the BIA generally provides to other tribes, whether or not the 638
19 Contracts included requests for funding, and (2) has thereby effectively prevented the Tribes
20 from being able to provide effective law enforcement services by failing or refusing to develop
21 an equitable funding formula that would result in an allocation of law enforcement funds to the
22 Tribes. The Secretary has breached his fiduciary duty to the Tribes and their members.

23 94. The ISDEAA places a mandatory, nondiscretionary duty on the Secretary to
24 enter into a 638 Contract with a requesting Indian tribe unless the 638 Contract as proposed
25 does not meet the requirements for contracting set forth in 25 U.S.C. § 450f(a)(2).

26 95. The Secretary has declined to enter into 638 Contracts for funding with the
27 Coyote Valley Band, the Hopland Band, and the Robinson Rancheria pursuant to 25 U.S.C. §
28 450f(a)(2)(D), on the alleged grounds that the amount of funds requested under the proposed

638 Contracts is in excess of the applicable funding level for the proposed 638 Contracts. The Secretary, however, provides no funding for the State of California from the funds that Congress appropriates each year to provide law enforcement services to Indian tribes throughout the United States, including tribes in P.L. 280 States because California is a P.L. 280 State.

96. The failure of the Secretary to properly divide the funds Congress appropriates each year to provide law enforcement services to Indian tribes is in direct violation of the Fifth Amendment to the United States Constitution and prevents the Tribes from being able to enter into 638 Contracts for funding for law enforcement services on their respective Reservations.

97. This action of arbitrarily discriminating against the Tribes is a breach of the Secretary's fiduciary obligation to carry out the Secretary's mandatory duties under the ILERA and ISDEAA in a fair and equitable manner consistent with the Fifth Amendment of the United States Constitution.

98. The Secretary's failure or refusal to allocate law enforcement funds appropriated by Congress in a fair and equitable manner constitutes a breach of the Secretary's fiduciary trust obligation imposed upon the Secretary under the ILERA, ISDEAA, and the TLOA.

99. An actual controversy exists between the Tribes and the defendants in that the Tribes contend that the defendants owe the Tribes and their members a continuing trust duty to provide effective law enforcement services under the ILERA, ISDEAA, and TLOA, while the defendants contend that they owe no such fiduciary duty to the Tribes.

100. Unless defendants are provisionally and permanently restrained and enjoined from declining to enter into a 638 Contract for law enforcement services with the Tribes, the Tribes will be deprived of "professional law enforcement" that is guaranteed to them by the ILERA, ISDEAA, and the TLOA, and the regulations promulgated thereunder, and the efforts of the Tribes to provide effective law enforcement on the Reservations will be thwarted.

WHEREFORE, the Tribes pray as hereinafter set forth.

EIGHTH CAUSE OF ACTION

[Violation of Fifth Amendment]

101. The Tribes reallege each of the allegations set forth in paragraphs 1-100 above and, by this reference, incorporate each such allegations herein as if set forth in full.

102. The Secretary has not engaged in formal rule making under the APA to adopt regulations to establish a funding formula for the equitable allocation of money that Congress appropriates each year for law enforcement services to the Indian tribes throughout the United States.

103. Instead of promulgating regulations to establish an equitable funding formula, the Secretary, acting through the OJS, allocates none of the funds appropriated by Congress to provide law enforcement services to tribes in California, including the Tribes, because California is a P.L. 280 State, even though the OJS provides law enforcement funds to tribes in other P.L. 280 States through the 638 Contracting process.

104. The Secretary's failure to promulgate regulations establishing an equitable funding formula for the allocation of law enforcement funds to the Tribes, and the Secretary's refusal to provide law enforcement funds to the tribes in California, is arbitrary and capricious and in direct violation of the ISDEAA, the TLOA, and the Fifth Amendment of the United States Constitution.

105. Unless the Secretary is provisionally and permanently ordered to develop an equitable funding formula that will allocate law enforcement funds to tribes in California, the Tribes will be deprived of the ability to provide the level of law enforcement services necessary to protect human life, maintain the peace, and protect property on the Tribes' respective Reservations in violation of the ISDEAA, ILERA, TLOA, and the Fifth Amendment to the United States Constitution.

WHEREFORE, the Tribes pray as hereinafter set forth.

NINTH CAUSE OF ACTION

[Money Damages]

106. The Tribes reallege each of the allegations set forth in paragraphs 1-105 above

1 and, by this reference, incorporate each such allegations herein as if set forth in full.

2 107. The ISDEAA, 25 U.S.C. § 450m-1(a), grants to this Court jurisdiction to sit in
3 the place of the United States Claims Court and award an Indian tribe money damages in an
4 amount equal to the amount of any 638 Contract funding request which the Secretary declined
5 to approve in violation of the ISDEAA, 25 U.S.C. § 450f(2).

6 108. The Hopland Band, Coyote Valley Band, and the Robinson Rancheria each
7 submitted a 638 Contract requesting funding to provide law enforcement services on their
8 respective Reservations.

9 109. The Hopland Band requested \$270,347; the Coyote Valley Band requested
10 \$398,235, and the Robinson Rancheria requested \$703,033.

11 110. The Secretary declined to enter into a 638 Contract with each of the Tribes and
12 refused to provide funding to the Tribes in the amount that each Tribe requested in its proposed
13 638 Contract on the grounds that no funds were available to provide law enforcement services
14 in California because it is a P.L. 280 State.

15 111. The refusal of the Secretary to make funds available to the Tribes that Congress
16 appropriates each year to provide law enforcement services is arbitrary and capricious and in
17 direct violation of the Administrative Procedure Act and discriminates against the Tribes in
18 direct violation of the Fifth Amendment to the United States Constitution.

19 112. As a direct and proximate result of the Secretary's alleged conduct, the Coyote
20 Valley Band, Hopland Band, and Robinson Rancheria have been harmed and suffered money
21 damages in an amount equal to the amount that the Coyote Valley Band, Hopland Band, and
22 Robinson Rancheria requested in their 638 Contracts.

23 113. Unless the defendants are ordered to pay to the Coyote Valley Band, the
24 Hopland Band, and the Robinson Rancheria the amount of funds they requested in their
25 proposed 638 Contracts, the Tribes will be unable to provide the level of law enforcement
26 services necessary to protect lives, maintain peace, and protect property on each of the Tribes'
27 Reservations in direct violation of the ISDEAA, the ILERA, the TLOA, the APA, and the Fifth
28 Amendment to the United States Constitution.

1 WHEREFORE, the Tribes pray as hereinafter set forth.

2 **PRAYER FOR RELIEF**

3 Pursuant to all of the foregoing causes of action, the Tribes pray that the Court award it
4 the following relief:

5 1. A declaration that the defendants' refusal to enter into 638 Contracts for law
6 enforcement services and to fund those contracts pursuant to the ISDEAA is arbitrary,
7 capricious, and contrary to law, in violation of the ISDEAA, the APA, the Fifth Amendment to
8 the United States Constitution, and the defendants' trust obligations to the Tribes.

9 2. A declaration that the defendants are required by the ISDEAA to contract with
10 the Tribes to provide law enforcement services on their reservations and to provide funding for
11 those law enforcement services.

12 3. An order directing the defendants to enter into the 638 Contracts for law
13 enforcement services with each of the Tribes as set forth in the Tribes' 638 Contracts.

14 4. An order directing the defendants to promulgate a funding formula for the
15 appropriation of 638 funds for law enforcement services in compliance with the requirements of
16 the APA and to implement that formula for all qualified tribes that enter into 638 Contracts
17 with the Secretary.

18 5. An order directing the defendants to provide funding for those 638 Contracts
19 pursuant to the Tribes' request for funding set forth in the 638 Contracts.

20 6. Award money damages to the Coyote Valley Band of Pomo Indians in the
21 amount of \$398,235; the Hopland Band of Pomo Indians in the amount of \$270,347; and the
22 Robinson Rancheria in the amount of \$703,033 as requested in their proposed 638 Contracts.

23 7. Award the Tribes their costs and reasonable attorneys' fees.

24 8. Grant the Tribes such further relief as the Court deems appropriate.

25 DATED: January 31, 2012

Respectfully submitted,

26 RAPPORT AND MARSTON

27 By: 
28

Lester J. Marston
Attorneys for Plaintiffs

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND FOR MONEY
DAMAGES