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7 Attorneys for Defendants

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 STATE OF CALIFORNIA,
12 Plaintiff,

13 v.

14 PASKENTA BAND OF NOMLAKI
15 INDIANS, A FEDERALLY RECOGNIZED
16 INDIAN TRIBE,
17 Defendants.

Case No. 2:14-cv-01449-KJM-CMK

**PASKENTA BAND OF NOMLAKI
INDIANS' SPECIAL, LIMITED
APPEARANCE & OPPOSITION TO
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

Hon. Kimberly J. Mueller

18
19 **I. INTRODUCTION**

20 Defendant, the Paskenta Band of Nomlaki Indians (the "Tribe"), opposes the relief sought
21 in the State's Motion for Temporary Restraining Order. This Opposition is filed on behalf of the
22 Tribe, by and through its duly elected and federally recognized Tribal Council.¹

23 Despite its Opposition, the Tribe will and does consent to the entry of an order enjoining
24 the operation of Rolling Hills Casino ("Casino") until that gaming operation is in compliance
25 with the Compact and there no longer exists an imminent threat to the public health and safety.
26 The State and the Tribe can agree as to that contingency (and jointly request the Court to lift such
27

28 ¹ By making this special, limited appearance, the Tribe in no way waives its immunity or challenges to the Court's jurisdiction.

order when appropriate) or comply with the contractual dispute resolution provisions that exist in the Compact.

Through its Complaint and Motion for Temporary Restraining Order, the State of California seeks to enjoin Defendant, the “Paskenta Band of Nomlaki Indians, a federally recognized Indian Tribe,” from engaging in certain conduct related to control and possession of the Rolling Hills Casino. The federal government does indeed recognize the Tribe, and it recognizes Andrew Freeman, David Swearingner, Leslie Lohse, Geraldine Freeman, and Allen Swearingner as Tribe’s uncontested, duly-elected Tribal Council. According to the United States Bureau of Indian Affairs (“BIA”) on June 9, 2014:

The last uncontested Tribal Council of the Paskenta Band of Nomlaki Indians is as follows:

- (1) Andrew Freeman, Chairman
- (2) David Swearingner, Vice Chairman
- (3) Leslie Lohse, Treasurer
- (4) Geraldine Freeman, Secretary
- (5) Allen Swearingner, Member at large

The BIA will continue to recognize these individuals as the tribe’s elected leadership and Tribal Council until this internal dispute can be resolved by the Tribe, pursuant to the Tribe’s own governing documents and processes.

ECF No. 3-3 at 69-70, Decl. of J. Dhillon, Ex. B; *see also* Declaration of Vice Chairman David Swearingner (recognizing the same five-person Tribal Council), Ex. A.²

For the reasons set forth below, the Court lacks jurisdiction to do anything other than enjoin the illegal and unsafe gaming activity currently taking place at the Casino. In accordance with federal law and the terms of the Compact between the State and the Tribe, the Court does possess the power to enjoin the operation of the Casino until the Tribe can demonstrate that it is in compliance with the Compact and that there no longer exists an imminent threat to the public health and safety. Such relief would seemingly satisfy all of Plaintiff’s concerns, and, again, the Tribe would consent to the entry of such an order. In fact, the Tribe fully intends to join in this

² More specifically, this brief is filed on behalf of the Tribal Council as authorized by David Swearingner, Leslie Lohse, Geraldine Freeman and Allen Swearingner. Mr. Andrew Freeman does not join in this Opposition, but is instead appearing independently through the Rosette law firm.

1 action the parties responsible for operating the Casino in contravention of the Compact and the
 2 Indian Gaming Regulatory Act (“IGRA”), which includes individuals and corporate entities who
 3 are not and have never been members of the Tribe. *See e.g., In re Sac & Fox Tribe of the Miss. in*
 4 *Iowa/Meskwaki Casino Lit.*, 340 F.3d 749 (8th Cir. 2003).

5 **II. ARGUMENT**

6 **A. The Court Lacks Jurisdiction to Do Anything Other Than Enjoin the Illegal** 7 **Gaming Activity at Rolling Hills Casino.**

8 Federal courts are courts of limited jurisdiction, and until the party asserting jurisdiction
 9 proves otherwise, cases lie outside a federal court’s jurisdiction. *Kokkonen v. Guardian Life Ins.*
 10 *Co. of Am.*, 511 U.S. 375, 377 (1994). Here, the State asserts federal question jurisdiction under
 11 28 U.S.C. § 1331 and has asserted a cause of action under IGRA, 25 U.S.C. § 2710(d)(7)(A)(ii).³
 12 Under 28 U.S.C. § 1331, federal courts “have jurisdiction [over] all civil actions arising under the
 13 Constitution, laws, or treaties of the United States,” clear examples of which are cases in which
 14 federal law creates a cause of action. *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808
 15 (1986). Under 25 U.S.C. § 2710(d)(7)(A)(ii), federal courts have jurisdiction over the narrow
 16 issue of whether, upon motion of a State or Indian tribe, to “enjoin a class III gaming activity
 17 located on Indian lands and conducted in violation of any Tribal-State compact entered into under
 18 [IGRA] that is in effect.” 25 U.S.C. § 2710(d)(7)(A)(ii); *see also Florida v. Seminole Tribe of*
 19 *Florida*, 181 F.3d 1237, 1242 (7th Cir. 1999) (finding that it was “clear that Congress abrogated
 20 tribal immunity [under 25 U.S.C. § 2710(d)(7)(A)(ii)] only in the narrow circumstance in which a
 21 tribe conducts class III gaming in violation of an existing Tribal-State compact.”); *In re Sac &*
 22 *Fox Tribe of the Miss. in Iowa/Meskwaki Casino Lit.*, 340 F.3d 749 (8th Cir.2003) (holding that
 23 the tribe’s elected council had jurisdiction under 25 U.S.C. § 2710(d)(7)(A)(ii) to bring a suit
 24 against the tribe’s appointed council to enjoin the appointed council’s alleged illegitimate
 25 operation of a casino under the terms of the tribe’s compact with the State of Iowa).

26
 27 ³ The State has not asserted diversity jurisdiction under 28 U.S.C. § 1332—nor could it—because Indian tribes are
 28 neither foreign states nor citizens of any state. *American Vantage Cos. v. Table Mountain Rancheria*, 292 F.3d
 1091, 1098 (9th Cir. 2002).

1 In support of its assertion that this Court has federal question jurisdiction over this matter,
 2 the State submits that its claim arises under federal statutes and federal common law. ECF No. 2,
 3 at 2. The State's single cause of action, however, is for breach of the Compact between the Tribe
 4 and the State, a contract. *Id.* at 4-5. Besides IGRA and cases interpreting IGRA, the State cites to
 5 no federal statute or federal common law under which this breach of contract claim arises. Thus,
 6 the Court only has federal question jurisdiction here to the extent IGRA confers it. Indeed, under
 7 federal law, jurisdiction over Indian tribes is limited: "[A]n Indian tribe is subject to suit only
 8 where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of*
 9 *Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 754 (1998).

10 Under IGRA, federal courts can "enjoin a class III gaming activity" that violates a
 11 compact. 25 U.S.C. § 2710(d)(7)(A)(ii). Here, the State has asked the Court to enjoin the Tribe
 12 from: (1) attempting to repossess or take control of its Casino—a request stated broadly enough to
 13 foreclose the Tribe from doing so even by peaceful means; (2) deploying armed guards within
 14 100 yards of not just the Casino, but also tribal properties surrounding the Casino including
 15 hotels, gas stations, and RV parks; and (3) having firearms within this same overly broad
 16 collection of properties. ECF No. 2, at 5. None of these activities are a "class III gaming
 17 activity," like slot machines or blackjack.⁴ As a result, the Court lacks jurisdiction to enjoin these
 18 activities.⁵

19 In its Complaint, the State has further asked the Court to declare the Tribe in breach of the
 20 Compact, and the gravamen of the Motion is the claim that the State can establish that it is likely
 21 to succeed on the merits. ECF No. 2, at 5-6. Its claim fails for a variety of reasons. Here too, the
 22

23 ⁴ "Class III gaming" activities are defined in 25 U.S.C. § 2703(8) as "all forms of gaming that are not class I
 24 gaming or class II gaming." "Class I gaming" refers to "social games solely for prizes of minimal value or
 25 traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies
 26 or celebrations." 27 U.S.C. § 2703(6). "Class II gaming" includes various games of chance and card games, but
 27 excludes games such as baccarat, blackjack, and slot machines. 27 U.S.C. § 2703(7). "Class III gaming" thus
 28 includes gaming activity occurring at the Casino.

⁵ To the extent that the tribe is seeking to enjoin individuals who are not the Tribe, or seeking to enjoin tribal
 members in their individual capacities, this suit must fail against the Tribe for lack of a sovereign immunity
 waiver. Section 9.4(3) of the Compact expressly revokes the Tribe's immunity waiver if a "person or entity
 other than the Tribe and the State is party to the action." ECF No. 3-3, at 44-45, Decl. of J. Dhillon, Ex. A,
 Compact, § 9.4(3).

1 Court lacks jurisdiction to grant any relief on the breach claim, including making such a
 2 declaration. First, there is no federal question jurisdiction for such declaratory relief. Second, the
 3 Tribe and the State agreed to follow contractual dispute resolution mechanisms prior to filing
 4 such a lawsuit, which the State has not followed. *See* ECF No. 3-3 at 44-45, Decl. of J. Dhillon,
 5 Ex. A [hereinafter “Compact”], § 11.2.1(c) (e.g., requiring the State and the Tribe to issue to the
 6 other “a sixty (60) day written notice of an opportunity to cure any alleged breach of this
 7 Compact” prior to bringing a suit for a declaration that the other materially breached the
 8 Compact). Third, the Tribe has not waived its sovereign immunity as to this relief. *Kiowa Tribe*
 9 *of Oklahoma*, 523 U.S. at 754.⁶

10 Because IGRA does not waive tribal sovereign immunity, courts must look to the
 11 Tribal/State gaming Compact to identify any limited waiver of immunity when one party to the
 12 Compact alleges a Compact violation. *Pueblo of Santa Ana v. Nash*, 972 F. Supp. 2d 1254
 13 (D.N.M. 2013). Here, as it relates to the Tribe’s waiver of immunity, the Compact provides the
 14 following, in relevant part: “In the event that a dispute is to be resolved in federal court . . . the
 15 Tribe expressly consent[s] to be sued therein and waive[s] any immunity therefrom that they may
 16 have *provided that* . . . [t]he dispute is limited solely to issues arising under this Gaming
 17 Compact.” Compact, § 9.4 (emphasis added). Importantly, federal law also limits the application
 18 of any waiver to “the narrow category of cases where compliance with the IGRA’s provisions is
 19 at stake.” *Pueblo of Santa Ana*, 972 F.Supp.2d at 1266; *see also Mescalero Apache Tribe v. New*
 20 *Mexico*, 131 F.3d 1379, 1385-86 (10th Cir. 1997) (same). And in this narrow category of cases,
 21 the only relief available to the State is to “enjoin [the Tribe’s] class III gaming activity . . .
 22 conducted in violation of [the] Tribal-State compact.” 25 U.S.C. § 2710(d)(7)(A)(ii). Thus, the
 23 Tribe’s waiver of immunity is limited to an injunction that prevents the illegal conduct of class III
 24

25 ⁶ Beyond these procedural shortcomings, the claim comes up short on substance. On one hand the State
 26 complains that the Tribe has violated the Compact by failing to exercise proper control and restraint and ensuring
 27 public safety, while on the other it seeks to prevent the Tribe from doing just that. The State has even submitted
 28 evidence in support of its TRO that affirmatively demonstrates the Tribe has undertaken Herculean efforts to
 take possession in a peaceful, legal manner, but has been frustrated by delayed responses to its requests for
 governmental assistance. By acknowledging the Tribe’s efforts to repossess the Casino, the State necessarily
 concedes that the Tribe is not in any position to control the operation or ensure public safety.

1 gaming activity. *Id.* To the extent that the State seeks relief beyond this, the Tribe has not
 2 waived its immunity.

3 Unlike its first four requests, the State's final request for the Court to "enter such further
 4 orders and judgments as it deems appropriate," ECF No. 2, at 6, can be reconciled with the
 5 limited jurisdiction of federal courts. Indeed, the Tribe agrees that the Court can and should enter
 6 an order and judgment in this matter temporarily enjoining the operation of any Class III gaming
 7 at the Casino. Furthermore, once proper parties are pled into this dispute, the Court should
 8 exercise authority over them to further enjoin their illegal gaming activity occurring at the Casino.

9 **B. The State Seeks Relief That Would Violate Federal Law.**

10 The State's request to this Court to enjoin the Tribe "from attempting to repossess, or take
 11 control of, the Casino" is a request to this Court to issue an order that would contravene federal
 12 law. The request should be denied for this independent reason as well. IGRA mandates that the
 13 Tribe retain sole proprietary interest in and the sole responsibility for the conduct of gaming on
 14 the Tribe's lands. 25 U.S.C. § 2710(b)(2)(A); 25 C.F.R. § 522.4(b)(1); *see also* Compact,
 15 preamble (the purpose of the IGRA is to "shield [the Tribe] from crime and other corrupting
 16 influences; to ensure that the [Tribe] is the primary beneficiary of the gaming operation; [and] to
 17 ensure gaming is conducted fairly and honestly by . . . the operator . . ."). National Indian
 18 Gaming Commission regulations dictate that Tribal officials can enter and inspect gaming
 19 facilities. 25 C.F.R. § 573.6(a)(9).

20 The management of the Casino is currently depriving the Tribe of its sole proprietary
 21 interest and its conduct of the Casino. Swearinger Decl. ¶¶ 8-9. In seeking an injunction barring
 22 the Tribe from "[a]ttempting to repossess, or take control of, the Casino," ECF No. 2, at 5, the
 23 State seeks relief that would be squarely at odds with IGRA because IGRA requires that the Tribe
 24 possess and control the Casino. *See* 25 U.S.C. § 2710(b)(2)(A). Implicit in the State's request is
 25 its concession that the Tribe neither presently possesses nor controls the Casino.

26 **C. The Tribe's Position**

27 The Tribe understands and appreciates the State's need to protect the public's safety, and
 28 shares those very same concerns. In fact, the Tribe has taken official action over the past ten

1 weeks to close its Casino for the same reason. Swearinger Decl., ¶¶ 11-12, Exh. C. The Tribe
 2 therefore specifically requests and urges the Court to issue the only relief allowable under the
 3 cause of action asserted by the State. 25 U.S.C. § 2710(d)(7)(A)(ii). Respectfully, the Tribe asks
 4 the Court to enjoin the operation of the Casino until the Tribe can demonstrate that the gaming
 5 operation is in compliance with the Compact and that there no longer exists an imminent threat to
 6 the public health and safety. *Id.*

7 The above-described possession and control requirements imposed on the Tribe pursuant
 8 to IGRA are front and center among the Tribe's concerns. The Tribe fears that the Casino's
 9 current operation by persons and entities that are not the federally recognized Tribe are harming
 10 the operation and long term viability of the Casino. As explained by the National Indian Gaming
 11 Commission (the federal regulatory agency established under IGRA) in an April 21, 2014 letter to
 12 the Paskenta Band of Nomlaki Indians Chairman, Andrew Freeman:

13 **It appears that the tribal government recognized by the BIA⁷ is not in**
 14 **control of the Band's gaming operation and remains excluded from the**
 15 **premises. . . . [¶] If true, the federally recognized tribal government is being**
 16 **deprived of the sole proprietary interest in and responsibility for the gaming**
 17 **operation. IGRA, NIGC's regulations, and the Band's gaming ordinance require**
 18 **that the Band retain the sole proprietary interest in and the sole responsibility for**
 19 **the conduct of gaming on the Tribe's lands. 2 U.S.C. § 2710(b)(2)(A); 25 C.F.R. §**
 20 **522.4(b)(1); Paskenta Band [] Gaming Ordinance, Art. IV. Additionally, NIGC's**
 21 **regulations require that authorized tribal officials be allowed to enter and inspect**
 22 **gaming facilities. 25 C.F.R. § 573.6(a)(9).**

23 Swearinger Decl., Exh. B (emphasis added). In point of fact, the Tribal Council has been
 24 excluded from entering the Casino by those currently operating it in contravention of NIGC,
 25 IGRA, and the Compact, along with their armed, non-Tribal security contractor, Zak's Security.
 26 *Id.*, ¶¶ 7-8 .

27 Indeed, the only sensible approach that facilitates both the State's desire to ensure the
 28 public's health and safety, and compliance with the Compact—which the Tribe desires as well—
 and ensures peaceful resolution that allows the Tribe to regain control of its gaming operations, is

⁷ See ECF No. 3-3 at 69-70, Decl. of J. Dhillon, Ex. B.

1 to temporarily close the Casino. Not only is this the sole relief the Court can fashion based on the
2 jurisdictional and immunity issues discussed *supra*, any other form of relief runs the continued
3 risk of indefinitely placing the Tribe in a position of being in breach (which could result in the
4 permanent cessation of Casino operations), and allowing the derisive conduct (i.e., operation of
5 the Casino) to continue to ignite controversy both on and off the Casino premises.

6 The Tribe and Mr. Freeman are currently attempting to schedule mediation (with hopes to
7 retain a mediator to sit down with them as early as this Friday, June 20, 2014) to resolve these
8 issues. Swearingin Decl. ¶ 13. In addition to resolving concerns regarding the public's health
9 and safety, the temporary closure of the facility would serve as an impetus to expediently resolve
10 the Casino problems with the assistance of the mediator.

11 **III. CONCLUSION**

12 For all the foregoing reasons the Court should refashion the relief requested and enter an
13 order enjoining the operation of the Casino until the Tribe can demonstrate that there no longer
14 exists an imminent threat to the public's health and safety and that it is in compliance with the
15 Compact. Indeed, this is the only relief that the Court may issue. 25 U.S.C. § 2710(d)(7)(A)(ii).

16
17 Dated: June 18, 2014

MCGREGOR W. SCOTT
J.R. RIDDELL
Orrick, Herrington & Sutcliffe LLP

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19
20 By: /s/ McGregor W. Scott
21 MCGREGOR W. SCOTT
22 Attorneys for Defendants
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8 UNITED STATES DISTRICT COURT
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11 STATE OF CALIFORNIA,
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14 PASKENTA BAND OF NOMLAKE
15 INDIANS, A FEDERALLY RECOGNIZED
16 INDIAN TRIBE,
17 Defendants.

Case No. 2:14-cv-01449-KJM-CMK

**DECLARATION OF VICE CHAIRMAN
DAVID SWEARINGER**

18 I, David Swearinger, declare:

19 1. My name is David Swearinger, and I am the Vice Chairperson of the Paskenta
20 Band of Nomlaki Indians. I have personal knowledge of each fact stated in this declaration.

21 2. The Paskenta Band of Nomlaki Indians is a federally recognized Indian tribe. The
22 Tribe operates pursuant to the Constitution of the Paskenta Band of Nomlaki Indians and other
23 Tribal laws. The Tribe is governed by a five member Tribal Council who are responsible for
24 providing essential government services to and protecting the health and welfare of the Tribe's
25 members. The Tribal Council is comprised of Chairman Andrew Freeman, Vice Chairman David
26 Swearinger, Treasurer Leslie Lohse, Secretary Geraldine Freeman, and Member-at-Large Allen
27 Swearinger.
28

DECLARATION OF SWEARINGER

1 3. With respect, I offer this Declaration without waiving any entity's sovereign
2 immunity protection and without consenting myself or the Tribe or any Tribal entity to suit.

3 4. Attached hereto as **Exhibit A** is a true and correct copy of a letter dated April 15,
4 2014, from the Bureau of Indian Affairs ("BIA") to the City of Orland Police. This letter has not
5 been appealed. The letter identifies "the last Tribal Council of Record at this Agency" as
6 Chairman Andrew Freeman, Vice Chairman David Swearinger, Treasurer Leslie Lohse, Secretary
7 Geraldine Freeman, and Member-at-Large Allen Swearinger.

9 5. On June 9, 2014, the BIA again recognized the last uncontested tribally elected
10 Council. ECF No. 3-3 at 69-70, Declaration of J. Dhillon, Ex. B.

11 6. Attached hereto as **Exhibit B** is a true and correct copy of a letter dated April 21,
12 2014, from Douglas Hatfield, NIGC Director of Compliance. This letter states that based on the
13 April 15, 2014, letter from the BIA, "the tribal government recognized by the BIA is not in
14 control of the Band's gaming operation and remains excluded from the premises."

16 7. The management (or former management, since we have dismissed them) of the
17 Tribe's Casino is currently occupying the Casino. I, along with Treasurer Lohse, Secretary
18 Freeman, and Member-at-large Allen Swearinger, attempted to enter the Casino on June 11, 2014.
19 A mob of Casino security personnel, non-Tribal members, and Tribal members prevented us from
20 doing so. Someone put my wife in a headlock and punched my daughter in the stomach. It is not
21 physically possible for me, as a member of Tribal Council, or any of my fellow Tribal Council
22 members, to peacefully enter the Casino. Casino security is preventing us from doing so.

24 8. We, as the governing body of the Tribe, have been physically prevented from
25 entering or possessing the Casino.

1 9. Chairman Andrew Freeman is playing some role in connection with management,
2 but through in my in-person conversations with him during the last week, I have learned that he is
3 likely not giving direction to Casino management regarding the Tribe's gaming operation.

4 10. Regardless, all actions taken in connection with the Casino by the Tribal Council
5 have been voted on and authorized pursuant to a unanimous vote of Tribal Council.

6 11. One of those actions was to formally and temporarily close the Casino until it is
7 safe, and the Tribe can wrest control of its gaming operation back from the management and
8 lawyers currently occupying it.

9 12. On May 9, 2014, the Tribal Council passed Resolution 2014-0435, taking
10 measures to shut down operations the Casino, particularly in light of reports of threatened
11 violence to casino employees and patrons. Pursuant to Resolution 2014-0435, the Tribal Council
12 issued a Casino Closure Notice on May 16, 2014. Attached hereto as **Exhibit C** is a true and
13 correct copy of Tribal Council Resolution No. 2014-0435 Adopting Emergency Security and
14 Safety Measures, and the Casino Closure Notice.

15 13. We, the Tribal Council, are currently attempting to schedule mediation with
16 Chairman Freeman in Sacramento as early as this Friday, June 20, 2014, to resolve the leadership
17 dispute.

18 14. Attached hereto as **Exhibit D** is a true and correct copy of the Tribe's Constitution.
19 Article III, Section 1 of the Tribe's Constitution identifies the Tribal Council as the governing
20 body of the Tribe, which shall consist of five (5) members elected from the General Council. The
21 General Council consists of all members of the Tribe who are eighteen (18) years of age or older.
22 Const., Art. III, §2. The Constitution mandates that the General Council "shall exercise its
23 powers through election of a Tribal Council, referendum, initiative, amendment, and such other
24 powers as may be reserved to them by this Constitution. *Id.* The Constitution also states that the
25
26
27
28

1 Tribal Council “shall consist of a Chairperson, Vice-Chairperson, Secretary, Treasurer, and one
2 other member each elected in an election held in accordance with this Constitution.” *Id.* at Art.
3 III, §1. Article VI, Section 1, of the Band’s Constitution describes the Tribal Council’s specific
4 authorized activities, including but not limited to the following authority:

5
6 To promulgate and enforce resolutions and ordinances providing for the exclusion
7 of persons from Band lands; and on such other subjects as the activity of the Band
8 may require that are not inconsistent with this Constitution . . . [, t]o initiate such
9 administrative proceedings and/or legal action on behalf of the Band as may be
10 necessary to protect the interests of the Band and its members . . . [, and t]o
11 preserve, protect and uphold this Constitution.

12 Likewise, Article VI, Section 2, of the Constitution provides that “[t]he Tribal Council shall have
13 all the appropriate powers necessary to implement specific provisions of this Constitution and to
14 effectively govern the affairs of the Band.” Decisions of the Tribal Council are valid and binding
15 when a quorum of three (3) members of the Tribal Council are present and approve of the action
16 item. *Id.*, Art. VII, §1(c).

17 The Chairperson has the Constitutional authority to preside at all meetings of the Tribal
18 Council and the General Council; to sign all contracts, leases or other documents approved by the
19 Tribal Council or the General Council; and to generally supervise Tribal officers, employees and
20 committees of the Tribe, to see that duties are properly performed. *Id.*, Art. VIII, §1. Critically,
21 nothing in the Constitution authorizes the Chairperson to unilaterally act or to otherwise
22 invalidate any action of the Tribal Council on his own accord.

23 I declare under the penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 DATED: June 18, 2014

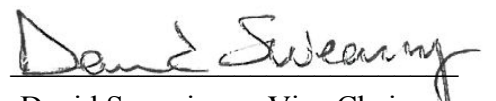
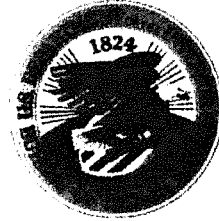
26 
27 David Swearing, Vice Chairperson
28 Paskenta Band of Nomlaki Indians

EXHIBIT A



United States Department of Interior
BUREAU OF INDIAN AFFAIRS
CENTRAL CALIFORNIA AGENCY
650 Capitol Mall, Suite 8-500; Sacramento, California 95814
Phone: 916.930.3680; Fax: 916.930.3780



FAX TRANSMITTAL

To: City of Orland Police, Cornerstone Community Bank/Red Bluff Branch

Date: Tuesday, April 15, 2014

No. of Pages: 01 of 02
mailed

Transmitted document(s) will NOT be

Subject: Paskenta Band of Nomlaki Indians

Messages:

To Whom It May Concern:

The following concerns the Paskenta Band of Nomlaki Rancheria



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

Executive Direction

APR 15 2014

City of Orland Police Department
774 Third Street
Orland, CA 95963

Cornerstone Community Bank, Red Bluff Branch
237 South Main Street
P.O. Box 889
Red Bluff, CA 96080

To whom it may concern:

Due to the recent notification of events that have occurred at the Paskenta Rancheria, we are sending the attached document, which is the last Tribal Council of Record at this Agency. For your information, the Bureau of Indian Affairs does not get involved in internal tribal disputes. We will and have always encouraged all tribes to extinguish all avenues within their governing documents to resolve internal disputes/matters.

Troy Burdick is this Agency's Superintendent and I am acting in his capacity today. If you should have any questions, please contact Carol Roger-Davis, Tribal Operations Officer, at (916) 930-3794 or me at (916) 930-3672.

Sincerely,

ACTING Troy Burdick
Superintendent

Tribal Operations

Honorable Andrew Freeman
Chairman, Paskenta Rancheria
Post Office 398
Orland, California 95963

JAN 12 2011

Dear Mr. Freeman:

The purpose of this correspondence is to acknowledge receipt of the Tribe's facsimile dated December 23, 2010, with attached Tribal Resolution 2010-10-02, Tribal Council Appointments, received on January 6, 2011, at the Bureau of Indian Affairs, Central California Agency.

On October 2, 2010, Resolution 2010-10-02, was approved at a duly convened Tribal Council meeting, at which a quorum was present, certifying the newly appointed council members. Therefore, the following individuals currently represent and serve as officials of the Paskenta Rancheria Tribal Council:

1. Andrew Freeman, Chairman
2. David Swearinger, Vice-Chairman
3. Leslie Lohse, Treasurer
4. Geraldine Freeman, Secretary
5. Allen Swearinger, Member-at-Large

Congratulations are extended to all the elected officials. Please feel free to contact my office about any Bureau program or any questions you may have.

Should you have any questions, please do not hesitate to contact Carol Rogers-Davis, Tribal Operations Officer, at (916) 930-3794.

Sincerely,

TROY BURDICK

Troy Burdick
Superintendent

bcc: 3731-P5 Paskenta Rancheria FY 11
37102-T1 Tribal Operations Chron CY 11
10102-T1 Superintendent Chron CY 11
TSam 01/12/11

TSam 01-12-11

EXHIBIT B



April 21, 2014

Andrew Freeman, Tribal Chairman
Paskenta Band of Nomlaki Indians
P.O. Box 398
Orland, CA 95963

Dear Chairman Freeman:

I am writing to express concern over recent events that have transpired with the Paskenta Band of Nomlaki Indians ("the Band"), and how those events affect the Band's Rolling Hills Casino. I have received information that during the Band's General Council meeting on April 12, 2014, that you dismissed four of the five members of the Tribal Council and that those four members have been excluded from tribal property.

The National Indian Gaming Commission (NIGC) defers to the Secretary of the Interior in areas in which the Secretary has expertise. The Secretary, through the Bureau of Indian Affairs, has expertise in recognizing whether a group should be recognized as a tribe and, when there are competing factions, which faction should be recognized as the tribal government. The Indian Gaming Regulatory Act (IGRA) acknowledges the Secretary's expertise by defining, for the purposes of Indian gaming, an "Indian tribe" as an organized group that "is recognized as eligible by the Secretary [of the Interior] for the special programs and services provided by the United States...." 25 U.S.C. 2703(5)(A). Gaming conducted by an entity other than an Indian tribe or an entity licensed by the tribe is not Indian gaming under IGRA and may not, therefore, be conducted on Indian lands.

On April 15, 2014, Troy Burdick the Acting Superintendent for the Bureau of Indian Affairs Central California Agency sent a letter to the City of Orland Police Department and Cornerstone Community Bank attaching a letter to you dated January 12, 2011, listing the names of the individuals the BIA recognizes as the Band's leadership. Based upon the information I received, it appears that the tribal government recognized by the BIA is not in control of the Band's gaming operation and remains excluded from the premises.

I am concerned that the gaming at the Casino is not being conducted by the Band--that is, by the governmental authority recognized by the Secretary of the Interior--or by an entity licensed by the tribal government pursuant to NIGC regulations. If true, the federally recognized tribal government is being deprived of the sole proprietary interest in and responsibility for the gaming operation. IGRA, NIGC's regulations, and the Band's gaming ordinance require that the Band retain the sole proprietary interest in and the sole responsibility for the conduct of gaming on the Tribe's lands. 25 U.S.C. § 2710(b)(2)(A); 25 C.F.R. § 522.4(b)(1); Paskenta Band of Nomlaki

Indians Gaming Ordinance, Art. IV. Additionally, NIGC's regulations require that authorized tribal officials be allowed to enter and inspect gaming facilities. 25 C.F.R. § 573.6(a)(9).

I have initiated an investigation into this matter to determine whether or not to recommend to the Chairman that a Notice of Violation be issued. If you have any questions, please contact me at (202) 632-7003.

cc: David Swearingner, Vice-Chairman
Leslie Lohse, Treasurer
Geraldine Freeman, Secretary
Allen Swearingner, Member-at-Large
Eric Schalansky, NIGC Sacramento Region Director

Sincerely,



Douglas Hatfield
Director of Compliance

EXHIBIT C



The Paskenta Band of Nomlaki Indians of California

RESOLUTION OF THE TRIBAL COUNCIL OF THE PASKENTA BAND OF
NOMLAKI INDIANS

Resolution No. 2014- 0435

Date: May 9, 2014

Subject: ADOPTING EMERGENCY SECURITY AND SAFETY
MEASURES

Andrew Freeman
Chairman

David Swearingner
Vice Chairman

Leslie Lohse
Treasurer

Geraldine Freeman
Secretary

Allen Swearingner
Member at Large

WHEREAS: The Paskenta Band of Nomlaki Indians (the "Tribe") is a federally recognized Indian tribe; and

WHEREAS: The Tribe is governed by a Constitution (the "Tribal Constitution") approved by the members of the Tribe on April 18, 1998, approved by the Secretary of the Interior on May 15, 1998, and amended by the members of the Tribe on April 17, 2004; and

WHEREAS: Article III, Section I of the Tribal Constitution provides that the governing body of the Tribe is the Tribal Council; and

WHEREAS: Since April 12, 2014, health, welfare, security, and safety of the Tribe and the entire Paskenta membership has been placed in serious peril, particularly through hostile statements and actions, and threats of physical violence, including those made against the Tribal Council and their family members; and such statements, actions and threats have been reported and documented by Tribal authorities and local police officer; and

WHEREAS: Under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq. ("IGRA"), tribal government must have sole proprietary interest in Indian gaming operations and must be the primary beneficiaries of tribal gaming revenues; and

WHEREAS: Under IGRA, the Tribe's Class III Gaming Compact with the State of California, and the Tribe's Gaming Ordinance, the Tribe's gaming activities are regulated by the Paskenta Tribal Gaming Commission; and

WHEREAS: On April 12, 2014, certain individuals illegally seized control of Rolling Hills Casino Operations; and

WHEREAS: Since April 12, 2014 those individuals in illegal control of Rolling Hills Casino Operations have, in violation of Tribal and federal law:

- Caused four cashier's checks totaling approximately \$357,000 to be issued from the Tribe's local bank depository, Cornerstone Community Bank, on April 16, 2014;

G Freeman Declaration Exhibit F

- Attempted to draw down the balance of the Tribe's \$20,000,000 line of credit with Wells Fargo Bank, on April 18, 2014;
- Advised Rolling Hills Casino employees to cash their paychecks at the casino cage.
- Diverted gross gaming revenues from the Rolling Hills Casino; and
- Excluded two of the three members of the Paskenta Tribal Gaming Commission from the premises of the Rolling Hills Casino; and

WHEREAS: The Tribal Council adopted Tribal Council Resolutions 2014-0419 and 2014-0420 by April 20, 2014, in an attempt to stem such illegal cash financial transactions; and

WHEREAS: On April 21, 2014, Douglas Hatfield, Director of Compliance for the National Indian Gaming Commission, sent a letter to Andrew Freeman in his former capacity as Chairman of the Tribe, conveying his concern that gaming occurring at the Rolling Hills Casino "is not being conduct by the Band—that is, by the governmental authority recognized by the Secretary of the Interior—or by an entity licensed by the tribal government pursuant to NIGC regulations"; and

WHEREAS: Since shortly after April 12, 2014, the Loomis armored car transport service, which for several prior years the Tribe used to transport cash deposits from the Rolling Hills Casino to secure financial repositories, has been suspended; and

WHEREAS: During that same time span, agents of the Tribal Council have witnessed persons at Rolling Hills Casino transport large amounts of cash out of the casino and into a white Sport Utility Vehicle on several mornings at approximately 4:00 a.m., to an off-site location where the cash transferred to other persons; and

WHEREAS: The Tribe Council believes the integrity of the Paskenta Tribal gaming operation, and control of cash at the Rolling Hills Casino, is at serious risk with monies being illegally diverted to an unknown location; and

WHEREAS: The National Indian Gaming Commission is currently conducting an investigation into the activities surrounding the illegal takeover at the Rolling Hills Casino, and this investigation remains ongoing; and

WHEREAS: With each day that has passed without on-site federal, state or local regulatory or law enforcement agency intercession since April 12, 2014, Paskenta public safety and gaming financial security issues have only grown worse; and

WHEREAS: In a similar situation involving the Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Nation, the National Indian Gaming Commission held that, when the governance of an Indian tribe is thrown into disarray, there is danger to the integrity of gaming; and

WHEREAS: The Tribal Council has been fully advised on and has fully discussed the need to protect Paskenta Tribal assets by remotely shutting down server-based computers and related systems associated with Class III gaming activities at Rolling Hills Casino; and

NOW, THEREFORE, BE IT RESOLVED that the Tribal Council hereby directs the remote shut down of all server-based computers and related systems associated with Class III gaming activities at Rolling Hills Casino, effective as of May 9, 2014, and to remain in effect until Paskenta public safety is protected, and the financial security and integrity of the Tribe's gaming operation can be restored; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Tribal Council will resume the operation of such computers and related systems upon some agreement or resolution that will cause: (1) a third-party accounting and audit of gross and net gaming revenues from Rolling Hills Casino and related Tribal enterprises dating back to at least April 12, 2014; (2) the verifiable identification of the whereabouts of any such revenues that have been illegally transported or transferred away from the Rolling Hills Casino; and (3) the Tribal Council's satisfaction that, in consultation with the National Indian Gaming Commission, appropriate remedial measures have been taken to ensure public safety and restore financial integrity and security to the Rolling Hills Casino and in Paskenta Indian Country; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Tribal Council hereby immediately authorizes an internal investigation into all allegations of illegal behavior in connection with the Rolling Hills Casino and related Tribal enterprises and activities, to be conducted by Thomas LaFreniere and Dynasec International,

Inc., the findings of which shall be reported to the Tribal Council as soon as is practically possible; and

NOW, THEREFORE, BE IT FINALLY RESOLVED that the Tribal Council, in concern for their own personal safety and that of their family members, hereby immediately authorizes California Special Investigations and Protective Services to provide personal security services to each Councilperson and their families, and to other Paskenta Tribal members to be approved by the Tribal Council on an as-needed basis.

CERTIFICATION

This will certify that the foregoing resolution was considered at a meeting of the Tribal Council of the Paskenta Band of Nomlaki Indians of California duly called and held on the 9th day of May 2014, and was adopted by a vote of 3 for, 0 against and 0 abstentions. A quorum of 4 was present.

Dated this 9 day of May 2014.

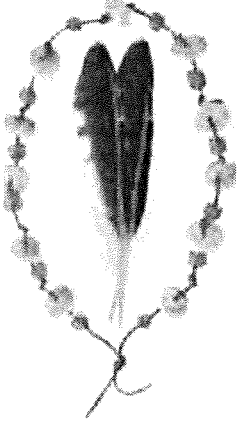
[VACANT]
Chairperson

David Swearinger
David Swearinger
Vice-Chairman

Geraldine Freeman
Geraldine Freeman
Secretary

Leslie Lohse
Leslie Lohse
Treasurer

Allen Swearinger
Allen Swearinger
Member-at-Large



The Paskenta Band of Nomlaki Indians of California

NOTICE OF ROLLING HILLS CASINO CLOSURE

Pursuant to Paskenta Band of Nomlaki Indians Tribal Council Resolution No. 2004-0435 dated May 9, 2014, and the letter of Rolling Hills Casino facility license revocation by the Paskenta Band of Nomlaki Indians Tribal Gaming Commission dated May 15, 2014, please be advised that the Rolling Hills Casino is closed.

Any person who enters or remains at the Rolling Hills Casino is subject to:

- Civil citation for trespass;
- Exclusion from the casino and all other Paskenta Indian country lands and properties;
- Paskenta Tribal law enforcement physical detention and removal, assessment of civil fines, seizure of security, and citation into the Paskenta Band of Nomlaki Indians Tribal Court; and
- Referral to United States and California state authorities for arrest and criminal prosecution.

Position Vacant
Chairman


David Swearinger
Vice Chairman

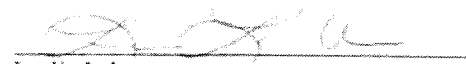
Leslie Lohse
Treasurer

Geraldine Freeman
Secretary

Allen Swearinger
Member at Large


David Swearinger
Vice-Chairman


Geraldine Freeman
Secretary


Leslie Lohse
Treasurer


Allen Swearinger
Member-at-Large

G Freeman Declaration Exhibit G

EXHIBIT D

CONSTITUTION
of the
PASKENTA BAND OF NOMLAKI INDIANS

PREAMBLE

The Paskenta Band of Nomlaki Indians, hereinafter referred to as the "Band," enacts this Constitution in order to establish a Tribal government through which we may exercise our inherent sovereign powers and privileges, and preserve and maintain our unique cultural and ethnic heritage.

ARTICLE I: TERRITORY

The territorial jurisdiction of the Band shall extend to all lands as to which the Band hereafter may acquire legal or beneficial title. 25 USC §1300m *et. seq.*

ARTICLE II: MEMBERSHIP¹

¹25 U.S.C. §1300 m-4.

(a) Compilation of Tribal membership roll

Within one year after November 2, 1994, the Secretary shall, after consultation with the Tribe, compile a membership roll of the Tribe.

(b) Criteria for membership

- (1) Until a Tribal constitution is adopted pursuant to section 1300m-6 of this section, an individual shall be placed on the membership roll if such individual is living, is not an enrolled member of another federally recognized Indian tribe, is of Nomlaki Indian ancestry, and if-

- (A) such individual's name was listed on the Paskenta Indian Rancheria distribution roll compiled on February 26, 1959, by the Bureau of Indian Affairs and approved by the Secretary of the Interior on July 7, 1959, pursuant to Public Law 85-671;

Section 1.

The membership of the Band shall consist of the following:

(a) All persons of Nomlaki Indian blood who resided on the Paskenta Rancheria at any time prior to the distribution of the assets of the Rancheria pursuant to the California Rancheria Act;

(b) All persons who were identified as Indians from Paskenta in any of the official or unofficial rolls of Indians prepared by the Bureau of Indian Affairs;

(c) All other persons who are direct lineal descendants of persons qualifying as members under subsections (a) or (b) and who have maintained Tribal relations with the Band, together with such other persons who apply for and are accepted into membership pursuant to the adoption provisions of an ordinance enacted under Section (3) of this Article.

Section 2.

Any person who is officially enrolled with or has received an assignment or allotment of land on the reservation of another federally-recognized tribe shall not be eligible for membership in the Paskenta Band of Nomlaki Indians; provided that

-
- (B) such individual was not listed on the Paskenta Indian Rancheria distribution list, but met the requirements that had to be met to be listed on the Paskenta Indian Rancheria list;
 - (C) such individual is identified as an Indian from Paskenta in any of the official or unofficial rolls of Indians prepared by the Bureau of Indian Affairs; or
 - (D) such individual is the lineal descendant of an individual, living or dead, identified in subparagraph (A), (B), or (C).
- (2) After adoption of a Tribal constitution pursuant to section 1300m-6 of this section, such Tribal constitution shall govern membership in the Tribe.
- (c) Conclusive proof of Paskenta Indian ancestry

For the purpose of subsection (b) of this section, the Secretary shall accept any available evidence establishing Paskenta Indian ancestry. The Secretary shall accept as conclusive evidence of Paskenta Indian ancestry, information contained in the census of the Indians in or near Paskenta, prepared by Special Indian Agent John J. Terrell, in any other roll or census of Paskenta Indians prepared by the Bureau of Indian Affairs, and in the Paskenta Indian Rancheria distribution list, compiled by the Bureau of Indian Affairs on February 26, 1959.

(a) interests in Tribally assigned or individually allotted land acquired by gift, devise or inheritance shall not be considered grounds for ineligibility; and

(b) if a person who is officially enrolled with another federally-recognized tribes executes a Notice of Intention to Relinquish Membership on a form approved by the Band, and is otherwise qualified for membership in the Band, he/she shall be deemed a member of the Band until such time as the Band is officially recognized by the United States government. Upon recognition, a member shall not be officially enrolled with the Band until he/she has executed a written relinquishment of his membership in any other federally recognized tribe.

Section 3.

The Tribal Council shall have the power to adopt ordinances, consistent with this Constitution, governing future membership, loss of membership, adoption of members into the Band and the preparation and maintenance of a Tribal membership roll.

ARTICLE III: GOVERNING BODY

Section 1.

The governing body of the Band shall be the Tribal Council, which shall consist of five (5) Tribal members elected from the General Council. The Tribal Council shall consist of a Chairperson, Vice-Chairperson, Secretary, Treasurer, and one other member each elected in an election held in accordance with this Constitution.

Section 2.

The General Council shall consist of all members of the Band who are eighteen (18) years of age or older. The General Council shall exercise its powers through election of a Tribal Council, referendum, initiative, amendment and such other powers as may be reserved to them by this Constitution.

ARTICLE IV: ELECTIONS

Section 1.

The first election under this Constitution shall be held within sixty (60) days after the date on which this Constitution is adopted. At that election, the Chairperson, Secretary, and Treasurer shall be elected to two (2) year terms while the Vice-Chairperson and one (1) Council member shall be elected to one (1) year terms. Thereafter, all terms of office shall be for two (2) years and elections shall be held annually consistent with the constitution.

Section 2.

Any enrolled member of the Band who is at least eighteen (18) years of age at the time of the election shall be eligible to vote. No person convicted of a felony or misdemeanor involving a charge of dishonesty, fraud, theft or moral turpitude shall hold office. Persons convicted of other felonies shall not hold office until ten years have elapsed since completion of their prison term or parole conditions. The Tribal Chairperson, Vice-Chairperson, and Treasurer cannot have felony convictions.

Section 3.

Any eligible voter of the General Council may announce his candidacy for Tribal office or membership on the Tribal Council no later than 30 days prior to an election. The list of candidates shall be announced publicly in the regular Tribal Council meeting immediately preceding the election and shall further be posted that same day at the Tribal office or such other place or places designated by the General Council in an election ordinance. If no person has announced his candidacy for a particular office prior to the Tribal Council meeting immediately preceding the election, nomination may be made from the floor at said meeting. In the event that no candidate is nominated for a particular office, the incumbent shall continue to serve therein until the next election. If there is no incumbent, the Tribal Chairperson shall have the power to appoint an eligible voter from the Band's membership to such vacant office. If the vacant office is that of Tribal Chairperson, the Vice-Chairperson shall serve as Chairperson until the election of a successor.

Section 4.

The candidate receiving the highest number of votes for a particular office shall be elected to that office.

Section 5.

Within thirty (30) days following the approval of this Constitution, the General Council shall elect an Elections Board and enact an election ordinance prescribing procedures for fair elections, absentee balloting, settlement of election disputes, handling of petitions and the conduct of referendum, initiative and recall elections. All elections shall be conducted by secret ballot.

Section 6.

All elections shall be supervised and conducted by an Elections Board composed of five members of the Band who are 18 years of age or older provided, however, that no member of the Elections Board shall be at the same time a member of the Tribal Council or a candidate for any other Tribal office. The initial terms of office for the three members of the Elections Board who receive the highest votes shall expire two years after the first annual General Council meeting following the Board members' election. The initial term of office for the remaining two Board members would expire one year after the first annual General Council meeting following the remaining Board members' elections. After the terms of the initial members of the Elections Board have expired, the terms of office of all Board members shall be three years. At the first General Council meeting following the adoption of this Constitution and at any annual General Council meeting thereafter, the General Council shall elect the members of the Elections Board. The Secretary of the Tribal Council shall update the Tribal roll and provide the Elections Board with a current and accurate roll within 48 hours of receipt of a written request to do so signed by the Chairperson of the Elections Board. The Board shall maintain a current voter registration list for use in all Tribal elections. Said voter registration list shall be available for inspection and copying in two (2) working weeks upon receipt of a nominal fee per copy by all Tribal members.

ARTICLE V: VACANCIES, REMOVAL AND RECALL

Section 1.

If a member of the Tribal Council dies or resigns or is absent from three (3) consecutive regular Tribal Council meetings in any twelve (12) month period, the Tribal Council shall declare the position vacant. If a member of the Tribal Council shall be convicted by a court of competent jurisdiction of a crime of moral turpitude while in office, or if a Tribal Council member is determined, based upon a preponderance of the evidence adduced at a duly noticed meeting at which that

member is given a fair and reasonable opportunity to be heard, to have committed acts which are contrary to the best interests of the Band or otherwise to have abused the powers or privileges of his office, the Tribal Council may declare the position vacant by a vote of a majority of the members of the Tribal Council then in office, not including the member whose position is the subject of the vote. If fewer than twelve (12) months remain of the officer's term, the Tribal Council shall, by a majority vote, fill the vacancy by appointing an eligible voter from among the Band's membership to serve the remainder of the term. A special election shall be called to fill vacated positions when more than twelve (12) months remain on an unexpired term.

Section 2. Recall.

Upon receipt of a petition signed by at least forty (40) percent of the eligible voters of the Band setting forth specific reasons for recalling any member(s) of the Tribal Council and demanding the recall of any member(s) of the Tribal Council, the Election Board shall call a special election on the question of the recall within thirty (30) days from the date of the filing of the valid petition with the Board. The election shall be held in the manner prescribed in the Tribe's election ordinance adopted in accordance with Article IV, Section 5, of this Constitution. The decision of a majority of the voters voting in the recall election shall be final, provided that at least thirty (30) percent of the eligible voters voted in the election. Should the Election Board fail to call an election within thirty days, the position shall be declared vacant and filled in accordance with Article V, Section 1; and the Election Board may be removed by the General Council for failure to comply with the provisions of this Constitution. If removal occurs, the General Council shall appoint new Board members to serve the remainder of the recalled Board members' terms. No recall election shall be held to recall any member(s) of the Council on the same grounds or for the same reasons that were rejected by the voters within the twelve-month period preceding the submission of the petition therefor.

ARTICLE VI: POWERS AND DUTIES OF THE TRIBAL COUNCIL

Section 1. Enumerated Powers.

The Tribal Council shall exercise the following powers and responsibilities subject only to those limitations imposed by this Constitution and applicable federal law:

(a) To negotiate contracts or conclude agreements with Federal, State, local and Tribal governments, private entities and individuals on behalf of the Band; to consult with the Department of the Interior on all activities of the Department which might affect the Band or the Paskenta Indian Reservation or Rancheria; and to advise the Secretary of the Interior and other federal officials on all federal projects for the benefit of the Band or the Reservation/Rancheria.

(b) To promote the health, education and general welfare of the members of the Band and to administer charity and such other services as may contribute to the social and economic advancement of the Band and its members.

(c) To encourage and foster arts, crafts, traditions and culture of the Band.

(d) To promulgate and enforce resolutions and ordinances providing for the manner of making, holding and revoking assignments of the lands on the Paskenta Reservation/Rancheria, providing for the levying of taxes and fees and the appropriation of available Band funds for public and other lawful purposes; providing for the licensing of business and other activities by any and all persons subject to the Band's jurisdiction; for the exclusion of persons from Band lands; and on such other subjects as the activity of the Band may require that are not inconsistent with this Constitution.

(e) To borrow money and provide for the repayment thereof, manage all economic affairs and enterprises, create Tribally-owned and/or chartered corporations or other business entities and employ and discharge Tribal employees.

(f) To initiate, approve or reject any acquisition, disposition, lease, encumbrance or condemnation of Tribal lands or property; to pledge newly-purchased lands as security for loans on such lands; to manage, protect and preserve all lands, minerals, wildlife and other natural resources of the Band; and to initiate and administer land development projects for the Band on Tribal lands.

(g) To create and maintain a reasonable Tribal fund for administrative expenses of the Band and to provide for remuneration for Tribal Council members and Tribal officials as may be required; to administer any funds or property within the control of the Band for the benefit of the Band and its members, officers or employees; and to allocate Tribal funds as loans or grants and to transfer Tribal property and other assets to Tribal organizations for such use as the Tribal Council may determine to be appropriate.

(h) To choose and employ legal counsel and/or other consultants and

representatives and to fix fees for such counsel, consultants, and/or representative(s), subject to the approval of the Secretary of the Interior or his delegate as required by law.

(i) To initiate such administrative proceedings and/or legal action on behalf of the Band as may be necessary to protect the interests of the Band and its members.

(j) To form or join Tribal courts/consortia/Indian organizations now existing or yet to be formed for the purpose of exercising the Band's civil and criminal jurisdiction and protecting the rights and interests of the Band's members, including those under the Indian Child Welfare Act. 25 U.S.C. § 1901 *et seq.*

(k) To create and regulate subordinate organizations; and to delegate to such organizations, or to any subordinate boards or officials of the Band any of the foregoing powers, reserving the right to review and rescind any action taken under such delegation.

(l) To preserve, protect and uphold this Constitution.

Section 2. General Powers.

The Tribal Council shall have all of the appropriate powers necessary to implement specific provisions of this Constitution and to effectively govern the affairs of the Band. All other powers heretofore vested in the Band and not specifically referred to in this Constitution, including the waiver of the Band's sovereign immunity to unconsented suit, are reserved to the General Council, and may be exercised through initiative, referendum or amendment to this Constitution.

ARTICLE VII: MEETINGS

Section 1. Tribal Council Meetings.

(a) Regular Meetings. Regular meetings of the Tribal council shall be held on the first Saturday of each month at a place and time designated by the Tribal Council or at such other times as the Tribal Council shall provide by resolution, provided, however, that once the Band acquires Tribal trust land and a building on its trust land suitable to hold Tribal Council meetings, all Tribal Council meetings shall be held on the Band's trust land. Within 30 days from enactment of this

Constitution the Tribal Council shall enact an ordinance establishing rules of procedure for conducting Tribal Council meetings. The ordinance shall provide that all council meetings shall be open to Tribal members except those items that are designated by the Council in the ordinance as appropriate for executive session. The ordinance shall also specify when a Council member is disqualified from participating or voting on issues because of a conflict of interest.

(b) **Special Meetings.** Special meetings of the Tribal Council may be called by the Chairperson at his discretion, and shall be called by the Chairperson upon receipt of a petition signed by three (3) Council members, provided the reason for the meeting is stated in the petition. Upon refusal of the Chairperson to call a special meeting, the petitioners may proceed to call and conduct the special meeting provided that a quorum is present. Twenty-four (24) hours' written or verbal notice shall be given of each special meeting.

(c) **Quorum.** No business shall be transacted at any meeting of the Tribal Council unless a quorum is present. A quorum of the Tribal Council shall consist of three (3) members.

(d) **Conflict of Interest.** No Tribal Council members who reside in the same household as a person having a direct financial interest shall participate in the discussion or determination of any matter in which he/she has a direct financial interest, or any matter directly affecting any person who resides in that Council member's household. Such members shall withdraw from any such matter, and the minutes shall indicate such withdrawal. Any member required to withdraw from a matter under this section shall still be counted present for purposes of establishing a quorum.

(e) **Order of Business.** The order of business at special meetings shall be as stated in the notice or petition by which the meeting is called. The order of business at regular meetings shall be as follows:

- A. Call to order;
- B. Roll call;
- C. Reading, correction and/or approval of minutes of previous meeting;
- D. Consent calendar;
- E. Public hearings;
- F. Petitions, communications and appeals;
- G. Unfinished business;
- H. Staff recommendations;

- I. Officers' and Committee reports;
- J. New business;
- K. Executive session;
- L. Adjournment.

Section 2. General Council meetings.

(a) Annual Meetings. The General Council shall meet at least annually on the third Saturday of April, beginning at 10:00 a.m., at a place designated by the Tribal Council upon thirty (30) days written notice to all adult Band members.

(b) Special Meetings. A special meeting of the General Council may be called by the Chairperson of the Tribal Council or shall be called by the Chairperson upon receipt of a valid petition signed by at least 25% of the qualified voters of the Band, for the purpose of bringing special business or issues to the General Council for discussion or enactment. A special meeting may be held no sooner than ten days from the date of mailing written notice of the meeting to all adult Tribal members by first class mail, provided that the reason for the meeting is stated in such notice and that a quorum is present. If, upon validation of the petition by the Secretary, the Chairperson does not call and give notice of the meeting within seven (7) days after validation, the next highest ranking officer shall exercise such authority, and upon failure of any of the Tribal Council to call and give notice of the special meeting, the petitioner spokesperson shall proceed to call, give notice of and conduct the special meeting; provided that a quorum be present. A special meeting of the General Council shall not be canceled after the seven-day notice is given. In any special meeting the General Council shall have the same power to transact business as in a regular meeting, including but not limited to removing any Council member from office and declaring their position vacant for failing to perform any of their duties required under this Constitution.

(c) Quorum. No business shall be transacted at any meeting of the General Council unless a quorum is present. A quorum of the General Council shall consist of thirty per cent (30%) of its members, provided that once a quorum has been established the General Council can continue to transact business so long as at least 20% of the members thereof are in attendance at the meeting. A quorum shall be required for the election of Tribal officers.

ARTICLE VIII: DUTIES OF OFFICERS

Section 1. Tribal Chairperson.

The Chairperson of the Tribal Council shall preside at all meetings of said Council and of the General Council. The Chairperson shall execute on behalf of the Band all contracts, leases or other documents approved by the Tribal Council or the General Council.

The Chairperson shall have general supervision of all other Tribal officers, employees and committees of the Band, and shall see that their duties are properly performed. Between sessions of the Tribal Council, he/she shall be the official representative of the Band.

The Chairperson shall prepare and cause to be posted at least three public places at least thirty (30) days before a General Council meeting, an agenda for the meeting. The items on the agenda shall include, but not be limited to: (1) presentation of the Band's annual audit for all Tribal enterprises by the Band's accountant and/or bookkeeper/financial officer; (2) a written report presented by the Treasurer of the Tribal Council: (a) on the finances of the Tribal government and (b) listing the names of all persons enrolled, disenrolled, or who relinquished membership in the Band during the fiscal year immediately preceding the meeting; (3) a written report presented by the Chairperson on all laws enacted by the Tribal Council during the four quarters immediately preceding the meeting, with a short summary explaining each law; (4) a written report presented by the Vice-Chairperson of the Band on the status of all Tribal land leases, including but not limited to, the amount, if any, of all lease payments paid to the Tribal government for each lease.

Section 2. Vice-Chairperson.

The Vice-Chairperson of the Tribal Council shall assist the Chairperson when called upon to do so. In the absence or incapacity of the Chairperson, the Vice-Chairperson shall preside over meetings of the Tribal Council and/or the General Council, and in that capacity shall be entitled to exercise all of the powers and be obligated to discharge all of the responsibilities of the Tribal Chairperson.

Section 3. Secretary.

The Secretary of the Tribal Council shall keep and file all Tribal correspondence, shall make and transcribe a complete and accurate record of all

matters transacted at meetings of the Tribal Council and/or the General Council and shall attest to the accuracy of all ordinances, resolutions or other enactments by the Tribal Council or the General Council. In the absence or incapacity of both the Chairperson and the Vice-Chairperson, the Secretary shall preside over meetings of the Tribal Council and/or the General Council, and otherwise shall serve as acting Chairperson until the Chairperson or the Vice-Chairperson again is able to exercise the powers and responsibilities of that office.

Section 4. Treasurer

The Treasurer shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Band and/or the Tribal Council, and shall account therefor. All such funds shall be deposited in such bank(s) or other repository as may be directed by the Tribal Council, and shall not be paid out or disbursed except upon proper authorization by the vote of a majority of the incumbent members of the Tribal Council. All checks drawn on the account(s) of the Band shall be signed by the Treasurer and the Chairperson; the Vice-Chairperson may sign properly authorized checks in the absence of the Chairperson. The books of account and other records maintained by the Treasurer shall be audited at least once per year by a competent auditor. The Treasurer shall be bonded at the expense of the Band.

Section 5. Tribal Records.

At the expiration of each Tribal Council member's term of office, each member shall be required to turn over all official Tribal records and papers in his custody to his successor.

Section 6. Appointed Officers.

The duties of all appointed officers or committees shall be clearly defined by the Tribal Council when and in the enactment by which such officers are appointed. Such officers and/or committees shall report on their activities and decisions as directed by the Tribal Council, and such actions and decisions shall be subject to the review and approval of the Tribal Council.

Section 5. Oath of Office.

Each officer of the Band elected or appointed under this Constitution or any resolution or ordinance shall take an oath of office before assuming the duties thereof, by which oath he/she shall pledge to support and defend the Constitution of the Paskenta Band of Nomlaki Indians. The oath shall be as follows:

I, _____, do solemnly swear that I will support and defend the Constitution of the Paskenta Band of Nomlaki Indians; that I faithfully and impartially will carry out the duties of my office to the best of my abilities; that I will cooperate with, promote and protect the best interests of the Band and its members, in accordance with this Constitution.

Section 6. Attendance at General Council Meetings.

All members of the Tribal Council shall attend all General Council meetings and report on those items provided by Section 1 of this article. Failure of any Council member to attend a General Council meeting, except for illness, the death of a member of the Tribal Council member's immediate family (i.e., spouse, grandparents, parents, uncles, aunts, siblings, first cousins, children or grandchildren), the serious illness of a Council member's immediate family or recognized and official Tribal business shall be grounds for immediate removal. The removal of a Council member under this section shall be decided by a majority vote of the members of the General Council in attendance, provided that the quorum requirements of Article VII(2)(c) are met.

ARTICLE IX: REFERENDUM AND INITIATIVE

Section 1. Referendum.

The General Council of the Band reserves the power independently to modify any legislation, resolution or policy of the Band. Any proposed referendum measure shall be presented to the Tribal Council accompanied by a petition signed by at least thirty percent (30%) of the qualified voters. The decision of a majority of the voters voting in the referendum shall be final, provided that at least 66% (sixty-six percent) of the qualified voters cast ballots. The Tribal Council shall call the referendum within thirty (30) days from the date of receipt of a valid petition.

Upon receipt of the petition the Secretary shall immediately verify the signatures and separately notify the Election Board of its receipt within twenty-four (24) hours. Upon verification of such petition, the Tribal Council may enact the proposed amendment. If the Tribal Council fails to enact the amendment within fourteen (14) days from the date of receipt of the petition, the Elections Board shall call a special election for the purpose of allowing the eligible voters of the Band to vote on the referendum measure. The election shall be held within forty-five (45)

days after receipt and verification of the petition by the Secretary. The result of the referendum election shall be final, provided that at least sixty-six per cent (66%) of the eligible voters cast ballots. If the Secretary fails to verify the petition or the Elections Board fails to call the election required herein, then, within sixty (60) days from the date that the petition was presented to the Tribal Council, there shall be a General Council meeting called by the Tribal Chairperson for the purpose of voting on the referendum petition. Absentee balloting will be permitted consistent with the Tribe's election ordinance.

Section 2. Initiative.

The General Council of the Band reserves the power independently to propose legislation for the Band. Any proposed initiative measure shall be presented to the Tribal Council accompanied by a petition signed by at least thirty percent (30%) of the qualified voters. Upon receipt of the petition the Secretary shall immediately verify the signatures and separately notify the Election Board of the petition within twenty-four (24) hours. Upon verification of such a petition by the Secretary, the Tribal Council may enact the proposed legislation. If the Tribal Council fails to enact the proposed legislation within fourteen (14) days from the date of receipt of the petition and separately notify the Elections Board of the petition, the Elections Board shall call a special election for the purpose of allowing the eligible voters of the Band to vote on the initiative measure. The election shall be held within forty-five (45) days after receipt and verification of the petition by the Secretary. The result of the initiative election shall be final, provided that at least sixty-six percent (66%) of the eligible voters cast ballots. If the Secretary fails to verify the petition or the Elections Board fails to call the election required herein, then, within sixty (60) days from the date that the petition was presented to the Tribal Council, there shall be a General Council meeting called by the Tribal Chairperson for the purpose of voting on the initiative petition. Absentee balloting will be permitted consistent with the Tribe's election ordinance.

Section 3. Limitations on Initiative and Referendum.

The Tribal Council shall have the power to decline to call a special election on any proposed initiative or referendum which was rejected by the voters within the twelve-month period preceding the submission of the petition therefor. No initiative or referendum shall be set for election which would void, cancel, abrogate, modify or amend any properly approved contract, agreement or compact to which the Band is a party.

Section 4. Secretary Removal.

The Secretary's failure to verify an initiative or referendum petition or notify the Elections Board of its filing shall be grounds for removing him/her from office.

ARTICLE X: BILL OF RIGHTS

Neither the Tribal Council nor the General Council shall exercise any power in such a manner as to deprive any person of rights secured by this Constitution or applicable laws of the United States.

Section 1.

All members of the Band shall enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, and association.

Section 2.

This Constitution shall not in any way alter, abridge or otherwise jeopardize the rights and privileges of the members of the Band as citizens of the State of California or the United States.

Section 3.

Individual property rights of any member of the Band, vested prior to the adoption of this Constitution, shall not be altered, abridged, or otherwise affected by the provisions of this Constitution.

Section 4.

Band members shall have the right to review all Tribal records, including financial records, at any reasonable time in accordance with procedures established by the Tribal Council.

Section 5.

The Band, in exercising its powers of self-government, shall not:

(a) make or enforce any law prohibiting the full exercise of worship or religion, or abridging the freedom of speech or of the press, or the right of any

person peaceably to assemble and to petition for a redress of grievances;

(b) violate the right of any person to be secure in their persons, houses, papers, and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(c) subject any person to be punished twice for the same offense;

(d) require any person in any criminal case to be a witness against himself;

(e) take any private property for a public use without paying the fair market value for the property;

(f) deny to any person in a criminal proceeding the right to speedy trial, to be informed of the nature and cause of the accusation, to confront and cross-examine witnesses, and, at his own expense, to have the assistance of counsel for his defense;

(g) require bail in excess of that necessary, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than that authorized by federal or Tribal law;

(h) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without notice and an opportunity for a fair hearing;

(i) pass any bill of attainder or ex post facto law; or

(j) deny to any person threatened with imprisonment the right, upon request, to a trial by jury of his peers of not less than six (6) persons. 25 U.S.C. §1301 et seq.

ARTICLE XI: SEVERABILITY

If any provision of this Constitution shall in the future be declared invalid by a court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XII: AMENDMENT

This Constitution may be amended by a majority vote of the eligible voters of the Band voting in an election called for that purpose, provided that at least two-thirds of those eligible to vote shall vote in such election.

ARTICLE XIII: RATIFICATION

This Constitution shall be effective when ratified by a majority of the eligible voters of the Band voting in a special election in which at least a simple majority of the eligible voters vote consistent with the Paskenta Band's Restoration Act.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Secretary of the Paskenta Band of Nomlaki Indians do hereby certify Constitution was ratified on the 18 day of April, 1998 consistent with the terms or Article XIII of this Constitution by a vote of 26 yes, 13 no, and 0 abstaining.

4-18-98
Date

Rebecca Sawaringer
Tribal Secretary