IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STAND UP FOR CALIFORNIA!, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF THE INTERIOR, et al., Defendants, v. NORTH FORK RANCHERIA OF MONO INDIANS, Intervenor-Defendant.	Civil Action No. 1:12-cv-02039-BAH Consolidated with: Civil Action No. 1:12-cv-02071-BAH Judge Beryl A. Howell

Answer of the North Fork Rancheria of Mono Indians to the Second Amended Complaint of Stand Up for California! et al.

Intervenor-Defendant the North Fork Rancheria of Mono Indians (Tribe), a federally recognized Indian tribe, submits this Answer to the Second Amended Complaint of plaintiffs Stand Up for California!, Randall Brannon, Madera Ministerial Association, Susan Stjerne, First Assembly of God – Madera, and Dennis Sylvester. The Tribe denies any factual allegation of the Amended Complaint not expressly admitted, qualified, or denied in this Answer.

1. The Tribe admits that the United States Secretary of the Interior has taken a 305.49-acre parcel of land (the Madera Parcel) into trust for the benefit of the Tribe and that the Tribe intends to develop and operate a gaming resort and hotel on the parcel. The allegation that the above actions are unlawful is a conclusion of law and therefore requires no response, but to the extent a response is required, the Tribe denies that the above actions are in any way unlawful. The Tribe denies the balance of the allegations in paragraph 1.

JURISDICTION

2. The Tribe admits that jurisdiction is proper.

3. The Tribe admits that venue is proper.

4. The allegations in paragraph 4 are conclusions of law and therefore require no response. To the extent a response is required, the Tribe does not contest the allegations in paragraph 4.

PARTIES

5. The allegations in the first three sentences of paragraph 5 constitute plaintiff Stand Up for California!'s description and characterization of itself, to which no substantive response is required. The Tribe lacks information or knowledge sufficient to form a belief as to the truth of Stand Up for California!'s assertion as to its supporters and where the supporters live and therefore denies that allegation. The Tribe denies the remaining allegations contained in paragraph 5. To the extent any further response is required, the Tribe denies the allegations that the Secretary's fee-to-trust acquisition will cause any of the alleged negative impacts and that Stand Up for California! or its supporters will suffer any cognizable injury.

6. The allegations in the first four sentences of paragraph 6 constitute plaintiff Randall Brannon's description and characterization of himself, to which no substantive response is required. The Tribe lacks information or knowledge sufficient to form a belief as to Mr. Brannon's residence and as to his alleged opposition to the Tribe's proposed development. The Tribe denies the remaining allegations contained in paragraph 6. To the extent any further response is required, the Tribe denies the allegations that the Secretary's fee-to-trust acquisition will cause any of the alleged negative impacts and that Mr. Brannon will suffer any cognizable injury.

7. The allegations in the first two sentences of paragraph 7 constitute plaintiff Madera Ministerial Association's description and characterization of itself, to which no substantive response is required. The Tribe lacks information or knowledge sufficient to form a belief as to the truth of Madera Ministerial Association's assertion as to its members and where the members live and therefore denies that allegation. The Tribe denies the remaining allegations contained in paragraph 7. To the extent any further response is required, the Tribe denies the allegations that the Secretary's fee-to-trust acquisition will cause any of the alleged negative impacts and that Madera Ministerial Association or its members will suffer any cognizable injury.

8. The allegations in the first six sentences of paragraph 8 constitute plaintiff Susan Stjerne's description and characterization of herself, to which no substantive response is required. The Tribe lacks information or knowledge sufficient to form a belief as to Ms. Stjerne's residence and as to her alleged opposition to the Tribe's proposed development. The Tribe denies the remaining allegations contained in paragraph 8. To the extent any further response is required, the Tribe denies the allegations that the Secretary's fee-to-trust acquisition will cause any of the alleged negative impacts and that Ms. Stjerne will suffer any cognizable injury.

9. The allegations in the first five sentences of paragraph 9 constitute plaintiff First Assembly of God – Madera's description and characterization of itself, to which no substantive response is required. The Tribe lacks information or knowledge sufficient to form a belief as to the truth of First Assembly of God – Madera's assertion as to its congregants and students and therefore denies those allegations. The Tribe denies the remaining allegations contained in paragraph 9. To the extent any further response is required, the Tribe denies the allegations that

the Secretary's fee-to-trust acquisition will cause any of the alleged negative impacts and that First Assembly of God – Madera or its congregants or students will suffer any cognizable injury.

10. The allegations in the first five sentences of paragraph 10 constitute plaintiff Dennis Sylvester's description and characterization of himself, to which no substantive response is required. The Tribe lacks information or knowledge sufficient to form a belief as to Mr. Sylvester's residence and as to his alleged opposition to the Tribe's proposed development. The Tribe denies the remaining allegations contained in paragraph 10. To the extent any further response is required, the Tribe denies that the Secretary's fee-to-trust acquisition will cause any of the alleged negative impacts and that Mr. Sylvester will suffer any cognizable injury.

11. The allegation in paragraph 11 is a conclusion of law and therefore requires no response. To the extent a response is required, the allegation is denied.

12. The Tribe admits that Kenneth Salazar was the Secretary of the Interior at the time that plaintiffs filed this lawsuit. The Tribe admits that on April 12, 2013, Sally Jewell replaced Kenneth Salazar as Secretary of the DOI. The Tribe admits that under Federal Rule of Civil Procedure 25(d), Sally Jewell was automatically substituted in place of Kenneth Salazar as a party to this action.

13. The Tribe admits that the Bureau of Indian Affairs (BIA) is an administrative agency of the United States and is charged with overseeing Indian Affairs.

14. The Tribe admits that Kevin Washburn is an Assistant Secretary of the Interior and administers the BIA.

OVERVIEW

15. The allegations in paragraph 15 are conclusions of law and therefore require no response. To the extent a response is required, the allegations are denied.

16. The Tribe denies that DOI's decision to take a 305.49-acre parcel of land into trust for the benefit of the Tribe is in any way unlawful and that the decision will cause harm to the Madera Parcel's neighboring communities and surrounding lands. The remaining allegations in paragraph 16 constitute plaintiffs' description of the law and their claims to which no substantive response is required. To the extent any response is required, the remaining allegations are denied.

BACKGROUND

The Secretary's Approval Process

17. The allegations in paragraph 17 are conclusions of law and therefore require no response. To the extent a response is required, the allegations are denied.

18. The allegations in paragraph 18 characterize the Indian Reorganization Act of 1934 (IRA) and the Supreme Court's decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009), which speak for themselves. To the extent the allegations are inconsistent with the IRA and *Carcieri*, they are denied.

19. The Tribe admits that in this case the Secretary acted under the Secretarial two-part determination provision of the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. § 2719(b)(1)(A). The allegations in the first and third sentences of paragraph 19 characterize IGRA, which speaks for itself. To the extent the allegations are inconsistent with IGRA, they are denied. The remaining allegations in paragraph 19 are denied.

20. The allegations in paragraph 20 characterize the DOI regulations codified at 25 C.F.R. § 292.2, which speak for themselves. To the extent the allegations are inconsistent with the regulations, they are denied.

21. The allegations in paragraph 21 characterize IGRA, which speaks for itself. To

the extent the allegations are inconsistent with IGRA, they are denied.

22. The allegations in paragraph 22 are conclusions of law and therefore require no response. To the extent a response is required, the allegations are denied.

Brief History of Federal Recognition of the North Fork Tribe

23. The Tribe denies that its historical, archeological, geographical and cultural roots are limited to the North Fork Rancheria or to the unincorporated community of North Fork. The Tribe avers that it has significant aboriginal, historical, cultural, and modern connections to Madera County in general, including, but not limited to, the North Fork Rancheria and the area around the Madera Parcel. The Tribe admits that the center of the unincorporated community of North Fork is 38 miles from the Madera Parcel. The Tribe denies the allegation that it never has had a recognized "reservation" in or near the vicinity of the Madera Parcel. The Tribe avers that the Madera Parcel has been taken into trust for the Tribe.

24. The allegation in paragraph 24 is a conclusion of law and therefore requires no response. To the extent a response is required, the allegation is denied.

25. The Tribe admits that in 1996 it ratified its Constitution at a General Council meeting of the Tribe, allowing it to establish a modern Tribal government.

North Fork Proposal to Acquire Off-Reservation Land

26. The Tribe denies that any of the lands within the exterior boundaries of the North Fork Rancheria are owned by, or held in trust for, the Tribe, and the Tribe avers that all such lands are held in trust for individual Indians. The Tribe avers that in late 2002, the Secretary placed into trust for the Tribe with funds from the Department of Housing and Urban Development a 61.5 acre parcel of land ("HUD Parcel") located on a steep hillside near the North Fork Rancheria on the understanding that the Tribe would use the land for tribal housing, a

tribal community center, and related uses. The Tribe admits that it submitted a fee-to-trust application requesting that the Secretary accept trust title to the Madera Parcel, which the Tribe intends to use for the development and operation of a gaming resort and hotel, but avers that it submitted the application on March 1, 2005. The Tribe denies the balance of the allegations in paragraph 26.

27. The Tribe admits that the Madera Parcel is located on Avenue 18 and Road 23, adjacent to the city limits of the City of Madera in southwest Madera County and adjacent to State Route 99. The Tribe denies the remaining allegations contained in paragraph 27.

28. The Tribe admits that it sought to have the Madera Parcel acquired in trust on its behalf for the purpose of developing a gaming facility in accordance with IGRA. The Tribe also admits that the Madera Parcel was privately owned by a wholly owned subsidiary of Station Casinos, Inc. The Tribe further admits that the Madera Parcel includes flat agricultural land with dry land crops and may have included vineyards and orchards, that a historic alignment of Schmidt Creek transects the property from the southeast corner of the site diagonally to the northwest, and that vegetation communities within the site may include seasonal wetland depressions. The Tribe denies the balance of the allegations in paragraph 28.

29. The Tribe admits that it has proposed to construct a hotel and entertainment facility on the Madera Parcel, including a class III gaming facility, with a casino floor that would be approximately 68,150 square feet and include up to 2,500 gaming devices, table games, and bingo, and retail space, banquet/meeting space, and administrative space; fifteen food and beverage facilities, including a buffet, six bars, three restaurants, and a five-tenant food court; a multi-story hotel with 200 rooms, a pool area, and a spa; and approximately 4,500 parking spaces, including a multi-level parking structure. The Tribe denies the balance of the allegations

in paragraph 29.

30. The Tribe admits that it has entered into a management agreement with a wholly owned subsidiary of Station Casinos, Inc. The Tribe denies the balance of the allegations in paragraph 30.

Review of the Tribe's Proposal

31. The Tribe admits that on October 27, 2004, DOI published a Notice of Intent to Prepare an Environmental Impact Statement in the Federal Register.

32. The Tribe admits that DOI issued a Draft Environmental Impact Statement in February 2008, but avers that DOI published notice in the Federal Register of a Final Environmental Impact Statement (FEIS) in August 2010. The Tribe denies the balance of the allegations in paragraph 32.

33. The allegations in the first sentence of paragraph 33 characterize the FEIS, which speaks for itself. To the extent the allegations are inconsistent with the FEIS, they are denied. The Tribe denies the allegations in the second sentence of paragraph 33. The Tribe denies the allegations in the third sentence of paragraph 33 because it lacks sufficient knowledge or information to form a belief as to the truth of the allegations. The Tribe avers that, pursuant to a memorandum of understanding with Madera County, it has agreed to make more than $4 million in annual contributions to the County and more than $6 million in one-time contributions to the County for community public safety, education, economic development, charities, and other projects. The Tribe admits that, pursuant to the memorandum of understanding with the County, it has agreed to provide a one-time payment of $1,915,000 that, in the County's discretion, may be used to acquire land for, construct, and/or equip a fire station or for such other public safety-related purposes upon which the County and the Tribe mutually agree. The Tribe also avers that,

pursuant to the memorandum of understanding, it has agreed to provide to the County recurring annual payments of the lesser of $1,200,000 or the costs to the County of nine fire protection positions and salaries, which shall be used to supplement the County's budget for fire protection. The Tribe denies that its funding will fail to mitigate the impact of its proposed development on governmental services and denies the balance of the allegations in paragraph 33.

34. The allegations in the first sentence of paragraph 34 characterize the Council on Environmental Quality regulations codified at 40 C.F.R. § 1506.5, which speak for themselves. To the extent the allegations are inconsistent with the regulations, they are denied. The Tribe admits that Analytical Environmental Services served as an environmental consultant for the FEIS. The balance of the allegations in paragraph 34 are denied.

35. The Tribe admits that some individuals and organizations have opposed the Tribe's proposed development. The Tribe lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 35 regarding any statements made by these individuals and organizations and therefore denies those allegations. The Tribe denies the balance of the allegations in paragraph 35.

36. The allegations in paragraph 36 are not sufficiently specific to permit an informed response. To the extent a response is required, the Tribe denies the allegations in paragraph 36 because it lacks sufficient knowledge or information to form a belief as to the truth of the allegations.

37. The Tribe admits that the Picayune Rancheria of the Chukchansi Indians (Picayune) operates a tribal gaming operation approximately 39 miles from the Madera Parcel. The Tribe denies the balance of the allegations in paragraph 37.

38. The allegations in paragraph 38 are not sufficiently specific to permit an informed

response. To the extent a response is required, the Tribe denies the allegations in paragraph 38 because it lacks sufficient knowledge or information to form a belief as to the truth of the allegations.

Subsequent Approvals

39. The allegations in paragraph 39 characterize the BIA's September 1, 2011 Record of Decision (ROD), which speaks for itself. To the extent the allegations are inconsistent with the September 1, 2011 ROD, they are denied. The Tribe denies that the announcement was unjustifiable and denies the balance of the allegations in paragraph 39.

40. The allegations in paragraph 40 characterize a September 1, 2011 letter from Larry Echo Hawk, then Assistant Secretary for Indian Affairs, to California Governor Jerry Brown, which speaks for itself. To the extent the allegations are inconsistent with the September 1, 2011 letter, they are denied. The Tribe denies that the letter ignored potentially significant environmental impacts that could result from the development or discounted such detrimental impact and denies the balance of the allegations in paragraph 40.

41. The Tribe admits that on August 31, 2012, Governor Jerry Brown concurred with the DOI's favorable Secretarial two-part determination and that Governor Brown also announced the signing of a class III tribal-state gaming compact (Compact) that he would submit to the California State Legislature for ratification. The Tribe avers that on June 27, 2013, the Legislature ratified the Compact. The Tribe admits that, following the approval by the Secretary and publication in the Federal Register, the Compact permits the Tribe to engage in class III gaming activities on the Madera Parcel.

42. The Tribe admits that the BIA's November 26, 2012 ROD memorializes the decision by the Secretary to approve the fee-to-trust application by the Tribe requesting that the

Secretary acquire the Madera Parcel. The Tribe lacks information or knowledge sufficient to form a basis as to the truth of plaintiffs' assertions regarding their efforts to obtain a copy of the November 26, 2012 ROD and therefore denies the balance of the allegations in paragraph 42.

43. The Tribe admits that on December 3, 2012, the DOI published notice in the Federal Register of its determination to acquire the Madera Parcel in trust for gaming purposes for the Tribe under the authority of the IRA. The allegation in the second sentence of paragraph 43 characterizes the notice, which speaks for itself. To the extent the allegation is inconsistent with the notice, it is denied. The Tribe admits that the decision is a final agency action pursuant to 25 C.F.R. § 2.6 and 5 U.S.C. § 704.

44. The allegation in the first sentence of paragraph 44 characterizes the regulations codified at 25 C.F.R. Part 151, which speak for themselves. To the extent the allegation is inconsistent with the regulations, it is denied. To the extent the allegation in the second sentence of paragraph 44 constitutes a conclusion of law, it requires no response; to the extent it constitutes an allegation of fact, it is denied.

Ratification and Approval of the Tribal-State Compact

45. The allegations in paragraph 45 characterize IGRA, which speaks for itself. To the extent these allegations are inconsistent with the Act, they are denied.

46. The Tribe admits that on August 31, 2012, the Tribe and the State of California executed a class III tribal-state gaming compact for gaming activities on the Madera Parcel. The Tribe admits that the Legislature ratified the Compact on June 27, 2013. The Tribe admits that the statute ratifying the Compact was signed by Governor Brown on July 3, 2013.

47. The Tribe admits that following the California Legislature's ratification of the Compact between the Tribe and the State of California, California Secretary of State Debra

Bowen forwarded the Compact to the DOI. The remaining allegations in paragraph 47 characterize Secretary of State Bowen's letter to the DOI dated July 16, 2013, which speaks for itself. To the extent these allegations are inconsistent with the letter, they are denied.

48. The Tribe admits that the Secretary took no action on the Compact within 45 days of its submission by the State of California. The Tribe admits that on October 22, 2013, the Secretary published approval of the Compact in the Federal Register.

49. The allegations in paragraph 49 characterize Secretary of State Bowen's letter to the DOI dated November 20, 2013, which speaks for itself. To the extent these allegations are inconsistent with the letter, they are denied.

Review of the Tribe's Status Under *Carcieri*

50. The allegations in paragraph 50 characterize the IRA, which speaks for itself. To the extent the allegations are inconsistent with the IRA, they are denied.

51. The allegations in paragraph 51 characterize the Supreme Court's decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009), which speaks for itself. To the extent the allegations are inconsistent with that decision, they are denied.

52. The allegation in paragraph 52 characterizes the September 1, 2011 ROD, which speaks for itself. To the extent the allegation is inconsistent with the September 1, 2011 ROD, it is denied.

53. The Tribe admits that the November 26, 2012 ROD states that the calling of a special election in 1935 "at the Tribe's Reservation conclusively establishes that the Tribe was under Federal jurisdiction for *Carcieri* purposes." The Tribe denies the balance of the allegations in paragraph 53.

54. The Tribe denies the allegations in paragraph 54.

FIRST CLAIM FOR RELIEF

55. Paragraph 55 reasserts and reincorporates the allegations contained in the previous paragraphs and therefore no further response is required.

56. The allegations in paragraph 56 characterize the IRA and the Supreme Court's decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009), which speak for themselves. To the extent the allegations are inconsistent with the IRA and *Carcieri*, they are denied.

57. The allegations in paragraph 57 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

58. The Tribe admits that in the November 26, 2012 ROD, the Secretary evaluated the applicability of *Carcieri* to the Tribe's application and concluded that the Secretary is authorized to acquire land in trust for the Tribe under 25 U.S.C. § 465. The Tribe denies the balance of the allegations in paragraph 58.

59. The allegations in paragraph 59 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

SECOND CLAIM FOR RELIEF

60. Paragraph 60 reasserts and reincorporates the allegations contained in the previous paragraphs and therefore no further response is required.

61. The Tribe admits that in this case the Secretary relied upon the Secretarial two-part determination provision in IGRA, 25 U.S.C. § 2719(b)(1)(A), to permit gaming to occur. The remaining allegations in paragraph 61 characterize IGRA, which speaks for itself. To the extent these allegations are inconsistent with the Act, they are denied.

62. The allegations in the first sentence of paragraph 62 are denied. The allegations in the second sentence of paragraph 62 are conclusions of law and therefore require no further

response. To the extent a response is required, the allegations are denied.

63. The allegations in paragraph 63 are denied.

64. The allegations in paragraph 64 are denied.

65. The allegations in paragraph 65 are denied.

66. The allegation in paragraph 66 is denied.

67. The allegations in paragraph 67 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

THIRD CLAIM FOR RELIEF

68. Paragraph 68 reasserts and reincorporates the allegations contained in the previous paragraphs and therefore no further response is required.

69. The allegations in paragraph 69 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

70. The allegations in paragraph 70 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

71. The allegations in paragraph 71 are denied.

72. The allegation in paragraph 72 is denied.

73. The allegations in paragraph 73 are denied.

74. The allegations in paragraph 74 are denied.

75. The allegations in paragraph 75 are denied.

76. The allegations in paragraph 76 are denied.

77. The Tribe admits that the Secretary concluded that "competition from the Tribe's proposed gaming facility in an overlapping gaming market is not sufficient, in and of itself, to conclude that it would result in a detrimental impact to Picayune." The balance of the

allegations in paragraph 77 are denied.

78. The allegations in paragraph 78 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

79. The allegations in paragraph 79 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

80. The allegations in paragraph 80 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

81. The Tribe admits that Analytical Environmental Services served as an environmental consultant for the FEIS. The balance of the allegations in paragraph 81 are denied.

FOURTH CLAIM FOR RELIEF

82. Paragraph 82 reasserts and reincorporates the allegations contained in the previous paragraphs and therefore no further response is required.

83. The allegation in paragraph 83 characterizes Section 176 of the Clean Air Act, codified at 42 U.S.C. § 7506(c)(1), which speaks for itself. To the extent the allegation is inconsistent with Section 176, it is denied.

84. The allegations in paragraph 84 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

85. The allegations in paragraph 85 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

86. The allegations in paragraph 86 characterize Section 176 of the Clean Air Act, codified at 42 U.S.C. § 7506(c)(1), and regulations codified at 40 C.F.R. Part 93, Subpart B (§§ 93.150-93.165), which speak for themselves. To the extent the allegations are inconsistent

with Section 176 or the regulations codified at 40 C.F.R. Part 93, Subpart B (§§ 93.150-93.165), they are denied.

87. The allegations in paragraph 87 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

88. The allegations in the first and last sentences of paragraph 88 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied. The Tribe admits: on or about May 6, 2011, federal defendants published a notice of the draft conformity determination; on or about June 18, 2011, federal defendants published a notice of the final conformity determination; on or about January 23, 2014, federal defendants mailed a 30-day notice of the draft conformity determination and federal defendants did not at that time re-publish the notice of the draft conformity determination; and on or about April 10, 2014, federal defendants mailed a notice of the final conformity determination, and federal defendants did not at that time re-publish a notice of the final conformity determination.

89. The allegations in the first three sentences of paragraph 89 characterize the Environmental Protection Agency regulations codified at 40 C.F.R. Part 93 and the notice of the latest version of the California motor vehicle emissions model, which speak for themselves. To the extent the allegations are inconsistent with the regulations or notice, they are denied. The Tribe denies the allegations in the fourth, fifth, and sixth sentences of paragraph 89 because it lacks sufficient knowledge or information to form a belief as to the truth of the allegations. The allegation in the last sentence of paragraph 89 is a conclusion of law and therefore requires no further response. To the extent a response is required, the allegation is denied.

90. The allegation in the first sentence of paragraph 90 characterizes the Environmental Protection Agency regulation codified at 40 C.F.R. § 93.159(d), which speaks for

itself. To the extent the allegation is inconsistent with the regulation, it is denied. The allegations in the second and last sentences of paragraph 90 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied. The Tribe admits that the most recent California State Implementation Plan revisions for the federal eight-hour ozone standard include emissions budgets for 2011, 2014, 2017, 2020, and 2023 for the San Joaquin Valley Air Basin. The Tribe denies the allegations in the remainder of paragraph 90 because it lacks sufficient knowledge or information to form a belief as to the truth of the allegations.

91. The Tribe admits that defendants conducted an applicability analysis that concluded that the proposed project was exempt from the conformity determination requirement because the project's estimated air pollutant emissions would be below the thresholds set in 40 C.F.R. § 93.153(b)(1). The Tribe denies the balance of the allegations in paragraph 91.

92. The Tribe admits that the Environmental Protection Agency subsequently reclassified the region as an extreme ozone nonattainment area and that defendants prepared a conformity determination. The Tribe denies the balance of the allegations in paragraph 92.

93. The allegations in paragraph 93 are denied.

94. The allegation in paragraph 94 is a conclusion of law and therefore requires no further response. To the extent a response is required, the allegation is denied.

95. The allegation in paragraph 95 is a conclusion of law and therefore requires no further response. To the extent a response is required, the allegation is denied.

96. The allegation in paragraph 96 is a conclusion of law and therefore requires no further response. To the extent a response is required, the allegation is denied.

97. The allegation in paragraph 97 is a conclusion of law and therefore requires no

further response. To the extent a response is required, the allegation is denied.

FIFTH CLAIM FOR RELIEF

98. Paragraph 98 reasserts and reincorporates the allegations contained in the previous paragraphs and therefore no further response is required.

99. The allegations in paragraph 99 characterize IGRA, which speaks for itself. To the extent the allegations are inconsistent with IGRA, they are denied.

100. The allegations in paragraph 100 characterize IGRA, which speaks for itself. To the extent the allegations are inconsistent with IGRA, they are denied.

101. The allegations in paragraph 101 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

102. The allegations in paragraph 102 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

103. The allegations in paragraph 103 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

104. The allegations in paragraph 104 are conclusions of law and therefore require no further response. To the extent a response is required, the allegations are denied.

PRAYER FOR RELIEF

The remainder of plaintiffs' Complaint consists of plaintiffs' prayer for relief. The Tribe denies that the plaintiffs are entitled to any of the relief, fees, or costs requested.

AFFIRMATIVE DEFENSES

The Tribe reserves the right to assert all affirmative defenses that may be revealed subsequent to this filing.

Dated: June 9, 2014

Respectfully submitted,

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