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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HOPLAND BAND OF POMO INDIANS,	)	Case No. 3:12CV556-CRB
<i>et al.</i>,	)	Hon. Charles R. Breyer
	)	Courtroom: 6
Plaintiffs,	)	Hearing: September 7, 2012, at 10:00 a.m.
)	
v.	)	DECLARATION OF DARREN A.
	)	CRUZAN SUBMITTED IN SUPPORT
KEN SALAZAR, Secretary of the Interior,	)	OF DEFENDANTS' COMBINED
<i>et al.</i>,	)	MOTION FOR SUMMARY
	)	JUDGMENT AND OPPOSITION TO
Defendants.	)	PLAINTIFFS' MOTION FOR
	)	SUMMARY JUDGMENT

I, Darren A. Cruzan, declare, pursuant to 28 U.S.C. § 1746, as follows:

- I am the Deputy Bureau Director of the Office of Justice Services ("OJS"), Bureau of Indian Affairs ("BIA"). In my position, I have responsibility for the overall management of BIA's law enforcement program. OJS's mission is to serve Indian country by protecting life, safety and property; promoting and maintaining order; preventing crime; and enforcing the law. I report directly to the BIA Director.
- The BIA – a component of the Department of the Interior ("Interior" or "the Department") – provides a broad range of services, both directly and through funding agreements with tribes and tribal organizations, to 2.3 million American Indian and Alaska Natives who are members of 566 federally-recognized tribes.

Tribal Priority Allocation

3. Congress appropriates money to BIA for the operation of Indian programs annually in a lump-sum appropriation. Congress bases its appropriation on the budget request that it receives from the President. The budget request for the operation of Indian programs is contained in the Department's budget justification. The budget justification takes about a year to develop. During that time, BIA holds meetings with tribal leaders to consult with them on developing annual budget requests. The result of this consultation is the Tribal Priority Allocation ("TPA"). BIA programs that are part of TPA include, among others: aid to tribal government; child welfare; education; road maintenance; resource management; tribal courts; and fire protection. TPA furthers Indian self-determination by giving tribes the opportunity to establish their own priorities and to move funds among programs accordingly. TPA is also the vehicle through which tribes can request new funds.
4. Historically, funds for law enforcement programs were part of the TPA process. Since 1999, however, funds for law enforcement have been listed as a separate program in the Department's budget justification. As a result of this change, tribes can still re-allocate unrestricted funds from other programs to law enforcement, but they can no longer re-allocate law enforcement funds to other programs. In 2008, for example, the Pokagon Band of Potawatomi Indians, located in Michigan and Indiana permanently reallocated, in consultation with BIA, \$250,000 from its Consolidated Tribal Government Program to law enforcement.
5. The Department's budget justification includes tables showing the amount of TPA funds requested for each tribe. BIA submits the budget request to the Department, which submits it to the Office of Management and Budget ("OMB"). The President's budget that is submitted to Congress includes these tribe-specific requests. It also contains OJS's methodology used to determine the method of distribution of new funds for public safety and justice programs. In some years, such as fiscal year 2009, Congress has indicated that it has met or exceeded the President's request for OJS funds; in others, such as the

1 current fiscal year, it has indicated that it has denied or reduced them.

- 2 6. After receiving its appropriation, BIA allocates TPA funds among the 566 federally-
 3 recognized tribes. In fiscal year 2012, BIA allocated (i) \$222,489 to Hopland, of which
 4 Hopland allocated \$221,097 to its consolidated tribal government program, \$289 to
 5 Indian child welfare, and \$1,103 to education; (ii) \$209,109 to Robinson Rancheria, of
 6 which Robinson allocated \$134,958 to aid to tribal government, \$2,744 to its
 7 consolidated tribal government program, \$49,046 to Indian child welfare, \$995 to human
 8 services, \$13,576 to education, and \$7,760 to job training; (iii) \$214,750 to Coyote
 9 Valley, of which Coyote Valley allocated \$126,518 to aid to tribal government, \$37,839
 10 to Indian child welfare, \$6,240 to human services, and \$43,077 to education;
 11 (iv) \$805,764 to Redding Rancheria, of which Redding Rancheria has allocated \$443,623
 12 to its self-governance compact (of which the tribe re-programmed \$26,000 back to the BIA
 13 Pacific Regional Office for the California Trust Consortium and California Fee-to-Trust
 14 Consortium), \$299,382 to contract support costs, \$76,000 to social services, \$4,842 to
 15 638 pay costs, \$7,738 to roads, and \$179 to transportation planning; and (v) \$216,623 to
 16 the Rincon Band of Mission Indians, of which the Rincon Band has allocated \$172,912 to
 17 aid to tribal government and \$41,711 to Indian child welfare.
- 18 7. Congress has given six states, including California, primary jurisdiction to enforce their
 19 criminal laws against Indians on tribal lands, Pub. L. No. 83-280, ch. 505, § 2, 67 Stat.
 20 588 (1953) (codified as amended at 18 U.S.C. § 1162) (“Public Law 280”). These states
 21 are known as “mandatory P.L. 280 states.” Over the years, Congress has also authorized a
 22 number of states to exercise concurrent criminal jurisdiction, sometimes over Indians on
 23 certain tribal lands, sometimes over Indians on all tribal lands within a state. *See, e.g.*, 54
 24 Stat. 249; 60 Stat. 229; 62 Stat. 1161; 62 Stat. 1224; 67 Stat. at 589, § 7 (*repealed and*
 25 *replaced with* 25 U.S.C. § 1321(a), *see* 25 U.S.C. § 1323(b)). These states are generally
 26 known as “optional P.L. 280 states.” Congress has also authorized states to retrocede
 27 jurisdiction over individual tribes back to the federal government, 25 U.S.C. § 1323(a),
 28 and has recently authorized tribes in mandatory P.L. 280 states, after consultation with

and consent by the Attorney General, to request concurrent (federal and state jurisdiction) over their tribal lands. 18 U.S.C. § 1162(d).

8. Under this regime, mandatory P.L. 280 states Alaska, California, Oregon, Minnesota, Nebraska, and Wisconsin exercise primary criminal jurisdiction over Indians on tribal lands, although certain tribes in Alaska, Minnesota, Nebraska, Oregon, and Wisconsin were either initially excluded or have been retroceded. Optional P.L. 280 states Florida, Kansas, and New York currently exercise concurrent criminal jurisdiction over all tribes in their states. Optional P.L. 280 states Idaho and Washington currently exercise varying levels of concurrent criminal jurisdiction over some tribes in their states. The Attorney General has not granted any requests to restore concurrent jurisdiction to tribes in mandatory P.L. 280 states.

Office of Justice Services' Law Enforcement Function

9. The BIA's Office of Justice Services ("OJS"), established by the Indian Law Enforcement Reform Act of 1990 ("ILERA"), has authority to enforce, or contract with tribes for the enforcement of, certain federal criminal laws on all tribal lands. *See* 25 U.S.C. §§ 2801, 2802(b)(1) 2802(c)(1); *see also* 18 U.S.C. § 1162(c). OJS has primary responsibility for enforcing, on tribal lands in non-mandatory P.L. 280 states (all except Alaska, California, Oregon, Minnesota, Nebraska, and Wisconsin), the Indian Country Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153. In addition, OJS has authority in all states to enforce, among other statutes: (1) embezzlement and theft from tribal organizations, 18 U.S.C. § 1163; (2) hunting, trapping, or fishing on Indian lands, *id.* § 1165; (3) felon in possession of a firearm, 18 U.S.C. § 922(g); (4) interstate (crossing tribal borders) domestic violence, 18 U.S.C. § 2261(a)(1)-(2); (5) interstate (crossing tribal borders) violation of a protective order, *id.* § 2262; (6) trafficking in Native American human remains and cultural items, 18 U.S.C. § 1170; (7) controlled substances, 21 U.S.C. §§ 841(a), 844; and (8) bribery of a tribal official. 18 U.S.C. § 666(a)(2). Tribes may also authorize OJS to enforce their respective tribal laws on their lands. 25 U.S.C. § 2802(c)(1).

10. In addition to criminal investigations and police services, OJS is also responsible for detention/corrections; inspection/internal affairs; tribal law enforcement and special initiatives; the United States Indian Police Academy; and tribal justice support and program management. OJS also provides oversight and technical assistance to tribal law enforcement programs.

Funding for Law Enforcement Programs

11. OJS allocates funds for law enforcement services based on a number of factors. In general, its stated policy is to provide direct coverage, provide funding for, or otherwise arrange for the provision of 2.8 federal law enforcement officers for every 1,000 members of resident populations on tribal lands. However, Congress has not appropriated funds sufficient for the agency to provide every tribe with the funding it seeks, and OJS must assess such factors as the cost per officer, costs of dispatch, administrative support, and office space in allocating funds for law enforcement. Among the 566 federally-recognized tribes, OJS operates or oversees 187 law enforcement programs, 26 of which are OJS-operated, and 151 of which are operated by tribes pursuant to the Indian Self-Determination and Education Assistance Act of 1975 ("ISDA"), Pub. L. No. 93-638 ("638"), 88 Stat. 2203 (codified as amended at 25 U.S.C. §§ 450 *et seq.*), either under self-determination ("638") contracts or self-governance ("Title IV") agreements. By statute, the obligation to fund tribes through 638 contracts or Title IV agreements is ongoing. OJS also operates 10 law enforcement programs that do not have defined service populations, which in some cases provide services for multiple tribes.

12. In addition to funding these ongoing obligations, OJS has developed a methodology for allocating *new* funds appropriated by Congress in a particular year to tribes that are experiencing high crime rates or that demonstrate a high-priority need based on: (1) reported crime rates; (2) staffing-level shortages; (3) drugs/gang activity; (4) detention facility shortages; (5) recorded calls for service resulting in a reportable incident; and (6) operating expenses for new Department of Justice-funded detention facilities. For fiscal year 2009, Congress indicated in its committee report accompanying

1 its annual appropriation that it was providing \$26.5 million in new funds for public safety
2 and justice programs, of which OJS allocated \$25 million to tribes for criminal
3 investigations and police services based on these criteria. For fiscal year 2010, Congress
4 indicated that it was providing \$55 million in new funds for public safety and justice
5 programs, of which OJS allocated \$20.5 million to tribes for criminal investigations and
6 police services based on these criteria. For fiscal year 2011, Congress indicated that it
7 was providing no new funds for public safety and justice programs. For fiscal year 2012,
8 Congress indicated that it was providing \$10.6 million in new funds for public safety and
9 justice programs, none of which was provided for criminal investigations and police
10 services.

11 13. Tribes without existing self-determination contracts can compete for these new funds on
12 equal footing with tribes that already have self-determination contracts for law
13 enforcement services. In early 2009, for example, the Snoqualmie Indian Tribe located in
14 Washington State submitted a proposal to contract law enforcement services from OJS.
15 In May 2009, the tribe received a base funding amount of \$18,500 through a new 638
16 contract to perform law enforcement services. The \$18,500 was provided from funding
17 available at the time of the proposal and was consistent with the amount of base funding
18 increase that the Snoqualmie Tribe would receive under the OJS's methodology for
19 allocating new funds.

20 14. OJS resources are stretched thin across the board, even in non-P.L. 280 states. Of the
21 approximately 387 federally recognized tribes in non-P.L. 280 states (which includes
22 Alaska native villages that are not subject to P.L. 280), comprising more than 75 percent
23 of the reservation- or village-based Indian population, OJS only provides, or contracts for
24 the provisions of, law enforcement services to 147 tribes. Oklahoma, for example, is a
25 non-P.L. 280 state where tribes do *not* have the benefit of state criminal law jurisdiction
26 over crimes committed by Indians on tribal lands. In southwest Oklahoma, OJS has the
27 resources to allocate funding for eight full-time law enforcement officers to provide 24
28 hour, seven-days-a-week coverage to six tribes over a four-county area with a combined

1 resident population of over 8,500. In Nevada, another non-P.L. 280 state, OJS has the
 2 resources to allocate funds for six full-time law enforcement officers who provide law
 3 enforcement services to six tribes located hundreds of miles apart. By way of
 4 comparison, of the 109 federally recognized tribes in California, approximately one-half
 5 have a resident population of less than 100, and most are quite small. Hopland and
 6 Robinson Rancheria have a resident tribal population of approximately 150; Coyote
 7 Valley has a resident tribal population of approximately 200; Redding Rancheria has a
 8 resident tribal population of approximately 233; and Rincon Band of Mission Indians has
 9 a resident tribal population of approximately 575.

10 **OJS Funding for Tribes in Public Law No. 280 States**

11 15. As noted above, Congress has given California and other P.L. 280 states the authority to
 12 enforce their respective criminal laws against Indians on tribal lands. This means that the
 13 resident populations of tribes in P.L. 280 states have the benefit of state criminal law
 14 enforcement on tribal lands for crimes committed by Indians. By contrast, the resident
 15 populations of tribes in non-P.L. 280 states do not have the benefit of this law
 16 enforcement service, and must rely solely on the federal government for outside law
 17 enforcement assistance. In light of this factor, and because of competing demands on
 18 OJS's limited resources, OJS has historically directed more resources for direct law
 19 enforcement services toward tribes in non-P.L. 280 states than toward tribes in mandatory
 20 P.L. 280 states. But OJS does not have a policy prohibiting the allocation of funds to
 21 tribes in mandatory P.L. 280 states. In fact, OJS allocates funding to tribes in mandatory
 22 P.L. 280 states.

23 16. For example, some tribes in mandatory P.L. 280 states have used their authority under
 24 TPA to re-allocate funds to a BIA law enforcement program and then taken over
 25 operation of that law enforcement programs via a 638 contract. The Red Cliff Band of
 26 Lake Superior Chippewa Indians, Stockbridge-Munsee Community Tribe, and Lac Du
 27 Flambeau Tribe, all located in Wisconsin (a mandatory P.L. 280 state), and the Lower
 28 Sioux Indian Community, located in Minnesota (a mandatory P.L. 280 state), obtained

638 contracts for law enforcement this way.

17. Other tribes in mandatory P.L. 280 states that have entered into a self-governance agreement with the BIA have used their authority to choose how to allocate its existing pool federal funds among various programs and activities to include a line item for a law enforcement program. The Leech Lake Band of Ojibwe Indians, located in Minnesota (a mandatory P.L. 280 state), the Oneida Tribe of Indians of Wisconsin (a mandatory P.L. 280 state), the Siletz Tribe located in Oregon (a P.L. 280 state and Montana (a non-P.L. 280 state), and the Manzanita Tribe in California (a mandatory P.L. 280 state) are among self-governance tribes located (or partially located) in P.L. 280 states that have allocated a portion of their existing funds to law enforcement.

18. The Hoopa Valley Indian Tribe and Yurok Indian Tribe, located in California, obtained federal funds for law enforcement programs for unique historical reasons. In the mid-1990s, BIA began providing direct law enforcement services to assist them in addressing violent criminal acts relating to a dispute over fishing rights. Both tribes later elected to transfer operation of those law enforcement programs via 638 contracts.

19. Additionally, OJS allocates law enforcement funds to some tribes that have lands in both a non-P.L. 280 state and a mandatory P.L. 280 state. The Quenchan Tribe of Ft. Yuma has tribal lands in Arizona, which is not a P.L. 280 state, and California, which is. Because state law enforcement officials in Arizona do not have jurisdiction over crimes committed by Indians on the tribe's land in Arizona, OJS had allocated funding to the tribe, which the tribe was able to take over via a 638 contract. A similar situation exists for Ft. Mojave and Colorado River Tribes, both of which have tribal lands in Arizona and California.

Additional OJS Resources Directed to California

20. In addition to funds for direct services, OJS has allocated funds for law enforcement for a full time law enforcement position in Sacramento, California, to process requests and provide administrative support to tribes in California that have 638 contracts for law enforcement services, self-governance agreements with a line item for a law enforcement

1 program, and tribal police departments that have entered into deputation agreement and
 2 obtained SLECs for their tribal officers. With respect to the later, OJS has entered into
 3 nine deputation agreements with tribes in California to assist OJS with the enforcement
 4 of federal law in Indian country and has provided consultation, training, certification, and
 5 supervision of tribal law enforcement officers operating under these SLECs.

6 **OJS's Deputation Agreement with Hopland**

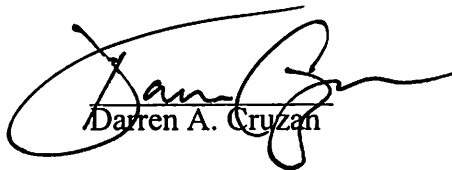
7 21. In part as a result of the settlement of *Hopland v. Norton* litigation, OJS entered into a
 8 deputation agreement under the ILERA with Hopland. This agreement was not a 638
 9 contract under the ISDA.

10 **Plaintiffs' Proposed Modifications to the Model Deputation Agreement**

11 22. OJS declined Hopland's December 14, 2010 proposal (Hopland's second proposal)
 12 because it was not based on the model deputation agreement published in the Federal
 13 Register, *see* 69 Fed. Reg. 6321 (Feb. 10, 2001), and sought to modify its existing
 14 deputation agreement to give its tribal officers powers beyond those OJS's own law
 15 enforcement officers have. Hopland's second proposal sought to have OJS grant to
 16 Hopland's tribal officers the power to enforce all state laws which the State of California
 17 has authorized federal law enforcement officials to enforce, regardless of the fact that
 18 BIA's law enforcement officers do not have this power. 25 U.S.C. § 2802(c)(1).
 19 Hopland's proposal also set forth several new paragraphs regarding the authority of tribal
 20 officers to travel and conduct activities outside of Indian country, even though BIA's law
 21 enforcement officers exercise limited authority outside of Indian country. *See* 25 U.S.C.
 22 § 2802(c)(1). *See also* 25 U.S.C. § 2802(a); 25 U.S.C. § 2803(2); 25 U.S.C. § 2803(3).
 23 The proposed revised agreements submitted by Robinson Rancheria and Coyote Valley
 24 contained the same proposed expansions of power beyond what OJS itself can provide.
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1 I declare under the penalty of perjury that the foregoing is true and correct based on
2 official information and belief.

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4 Dated: 6-21-12

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6 Darren A. Cruzan
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