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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

13
14 BISHOP PAIUTE TRIBE,)
15) Case No. 1:15-CV-00367 GEB-JLT
16 Plaintiff,)
17 vs.) REPLY OF SHERIFF WILLIAM LUTZE
18) TO OPPOSITION TO MOTION TO
19 INYO COUNTY, a governmental entity,) DISMISS AMENDED COMPLAINT FOR
WILLIAM LUTZE, Inyo County Sheriff;) FAILURE TO STATE CLAIM UPON
and THOMAS HARDY, Inyo County) WHICH RELIEF CAN BE GRANTED
20 District Attorney,) JOINDER IN REPLIES BEING FILED
21 Defendants.) BY COUNTY OF INYO AND DISTRICT
ATTORNEY THOMAS HARDY

22) Date: June 2, 2015
Time: 9:30 A.M.
23) Dept: To Be Assigned

24 District Judge: Hon. Garland E. Burrell
25 Magistrate: Hon. Jennifer L. Thurston
26 Complaint Filed: 3/6/15
27 Trial Date: Not Set

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I

INTRODUCTION

In paragraph 1 of its pending Complaint for Declaratory and Injunctive Relief (“Complaint”), plaintiff Bishop Paiute Tribe (“Tribe”) states:

“1. *This action is for declaratory and injunctive relief by the Bishop Paiute Tribe (“Tribe”), a federally recognized Indian Tribe, against Inyo County, the Inyo County’s (sic) Sheriff and District Attorney, for the arrest and prosecution of a Bishop tribal law enforcement officer for performing his duties on the Tribe’s Reservation.*” (Italics supplied)

In response, defendants County of Inyo (“County”), Sheriff William Lutze (“Sheriff” or “Sheriff Lutze”), and District Attorney Thomas Hardy (“District Attorney” or “Mr. Hardy”) each filed, on grounds that are individual to it/him, respectively, a motion to dismiss the Complaint for failure to state a claim upon which relief can be granted.

After receiving and reviewing those motions, and after consultation with defense counsel regarding this case (Opposition, page 2, line 23; and Opposition, page 9, lines 25-27), and contrary to its clear above-quoted allegation and statement of what “This action is for...,” the Tribe now asserts in its Opposition that it is:

“... apparent that Defendants are confused regarding the relief sought by the Tribe. The Tribe is not seeking to enjoin or interfere with the pending state criminal case against Tribal Officer Daniel Johnston.”
Opposition, page 9, lines 25-27.

Instead, the Tribe now asserts, initially, that what it is asking for is a “clarification and settling, as a matter of federal law, [of] its [claimed] inherent authority over non-Indian offenders who violate tribal and state law on tribal lands,” and that once declared, it is also seeking “prospective injunctive relief preventing the defendants from further arrests and prosecutions of its law enforcement officers when exercising tribal authority.” (Opposition, page 2, lines 1-3; first two underscores supplied; third underscore in original text).

The Tribe’s Opposition thereafter expands on this statement of sought-after relief, and is so doing expands the same to include a claimed right to “stop, restrain, [and] detain” non-

1 Indians on tribal lands, and thereupon, with regard to such non-Indians who are “stopped,
2 restrained and detained” – to further “investigate violations or possible violations of tribal,
3 state or federal law by non-Indians on tribal lands.” Opposition, page 10, lines 8-10.

4 The Tribe goes on to state in its Opposition, at page 10, lines 10-12, that, with respect
5 to these claimed tribal rights over non-Indians, once the Court “clarifies and settles” the same,
6 “... the Tribe seeks a *prospective* injunction against future criminal charges and prosecution
7 against its officers” when and while its officers are exercising the authority over non-Indians
8 that the Tribe is asking this District Court to “clarify and settle.” (Italics in original text.)

9 In response to these Opposition positions of the Tribe, defendants reply as follows:

10 1. No federal constitutional or statutory provision, and no Ninth Circuit or Supreme
11 Court of the United States decision (nor any District Court decision, as far as is known to
12 defendants) has ever declared the existence of the Tribe’s claimed authority and rights over
13 non-Indians (to detain, forcibly restrain, and investigate for state and federal law violations,
14 etc.) for which the Tribe is now seeking “clarification and settling;”

15 2. Any establishment of a federal law providing such jurisdiction of Indian tribes
16 over non-Indians is within the purview of Congress – and not the Courts;

17 3. The Court herein should, respectfully, decline the invitation of the Tribe for a
18 “clarification and settling” of its claimed authority over non-Indians, as is the Court’s right to
19 do under the Declaratory Relief Act (28 U.S.C. § 2201), and dismiss this case; and

20 4. On the grounds set forth in the defendants’ individual and pending motions to
21 dismiss, including a lack of the Constitution’s Article III case or controversy requirement, the
22 Court should sustain said motions to dismiss, and dismiss the Tribe’s Complaint without leave
23 to amend.

24 II

25 THE CLAIMED EXISTING FEDERAL LAW THAT THE TRIBE ASSERTS IN
26 ITS OPPOSITION, AND FOR WHICH THE TRIBE IS THEREIN ASKING THE
27 COURT FOR A “CLARIFICATION AND SETTLING” (WHICH IS THE
28 CLAIMED “INHERENT AUTHORITY” ALLOWING TRIBES TO EXERT
COMMON LAW JURISDICTION OVER NON-INDIANS TO STOP THEM,

1 RESTRAIN THEM, DETAIN THEM, AND INVESTIGATE VIOLATIONS, OR
2 POSSIBLE VIOLATIONS, OF TRIBAL, STATE AND FEDERAL LAW BY
3 THEM) IS NOT SUPPORTED IN THE PLEADINGS, AND DOES NOT EXIST

4 As above stated, this action has changed course, and the Tribe is no longer seeking
5 declaratory and injunctive relief "... against Inyo County, the Inyo County's Sheriff (sic) and
6 District Attorney, *for the arrest and prosecution of a Bishop tribal law enforcement officer for*
7 *performing his duties on the Tribe's Reservation.*" Complaint, paragraph 1 (italics supplied).

8 As now presented in its Opposition, the Tribe is seeking only a "clarification and
9 settling" of what it claims is an "inherent authority" of Indian tribes to "stop, restrain, [and]
10 detain" non-Indians on tribal lands, and thereupon, with regard to such non-Indians who are
11 "stopped, restrained and detained" by the tribes – to further "investigate violations, or possible
12 violations, of tribal, state or federal law by non-Indians on tribal lands." Opposition, page 10,
13 lines 8-10.

14 The Tribe gives no legal precedent for this claimed real-life inherent authority over
15 non-Indians in its Opposition. In its Complaint, however, the Tribe alleges that it has such
16 authority by virtue of two Ninth Circuit cases, along with the legal reasoning in a Washington
17 State Supreme Court case. These cases are:

- 18 1. *Ortiz-Barraza v. United States*, 512 F.2d 1176 (9th Cir. 1975) (see Complaint,
19 paragraphs 35 and 38);
- 20 2. *United States v. Becerra-Garcia*, 397 F.3d 1167 (9th Cir. 2005) (see Complaint,
21 paragraph 39); and
- 22 3. *State of Washington v. Schmuck*, 850 P.2d 1332 (1993) (see Complaint,
23 paragraph 40).

24 A reading of these cases reveals, however, that they do not prescribe any of the
25 Opposition-claimed tribal inherent authority or jurisdiction over non-Indians with regard to
26 violations of either tribal law, or state or federal criminal law. What they do stand for and
27 confirm is that: (1) Tribes have the inherent right to exclude trespassers from their lands; (2)
28 tribes also have the right to establish tribal criminal laws which are applicable to tribal

1 members; and (3) when, during the course of a tribal law enforcement officer's investigation
2 into either situations (1) or (2) above,¹ it is discovered that the person being investigated has
3 violated a state or federal criminal law, the tribal authority (tribal law enforcement officer)
4 may detain that person, whether the person is a tribal member Indian, non-tribal member
5 Indian, or non-Indian, and turn him or her over to a properly credentialed state or federal law
6 enforcement officer for whatever action that officer deems is appropriate.

7 This was demonstrated and approved in the case of *Ortiz-Barraza*, supra, a case
8 involving whether evidence (marijuana) should be excluded in a criminal trial in federal court
9 where the defendant was charged with smuggling the marijuana into the country from Mexico.

10 In this case, a Papango Tribal Law Enforcement Officer, who was not cross-
11 certificated as an Arizona peace officer (*Ortiz-Barraza*, supra, page 1179), and was not a BIA
12 federal law enforcement officer (*Ortiz-Barraza*, supra, page 1179), stopped the defendant, Mr.
13 Ortiz-Barraza, for suspected trespass in violation of the Tribe's Article 5, Section 3 (trespass),
14 as well as a Tribal Code provision that made any non-tribal member who committed a state or
15 federal crime on the reservation subject to forcible ejection from the reservation (*Ortiz-*
16 *Barraza*, supra, pgs 1179-1180). Upon stopping Mr. Ortiz Barraza, the tribal officer
17 discovered the marijuana, and turned him over to the U.S. Drug Enforcement Administration.
18 The Court held that the marijuana discovered by the tribal officer, while investigating the
19 suspected trespass and smuggling by Mr. Ortiz-Barraza (the smuggling making Ortiz-Barraza
20

21 ¹ Where, as here, in California, the tribal law enforcement officer is not otherwise cross-
22 deputized or appointed by the local Sheriff or other appropriate law enforcement official per
23 California Penal Code § 830.6(b), and is not a federal law enforcement officer as described in
24 Penal Code § 830.8(a), with respect to California state law; and where, also as here, the tribal
25 law enforcement officer is not otherwise commissioned by the United States Bureau of Indian
Affairs (BIA) to have federal law enforcement powers pursuant to the BIA's Special Law
Enforcement Commission (SLEC) program, per 25 C.F.R. § 12.21, et seq.

26 Note: California Penal Code §§ 830.6(b) and 830.8(a), and 25 C.F.R. §
27 12.21, provide in pertinent part as is set forth on Exhibit A attached to this
28 Reply.

1 subject to forcible ejection from the reservation by the Tribal Code), was admissible because
2 the stop, detention and search by the tribal officer was performed in the course of *investigating*
3 *tribal law violations re trespass and conduct exposing the perpetrator to forcible ejection*
4 *under tribal law*. The tribal officer was thus investigating a trespass and tribal law violation –
5 not an Arizona state law or federal law violation per se. *Ortiz-Barraza*, supra, page 1180.

6 The case of *Becerra-Garcia*, supra, is similar – another suppression of evidence case.
7 In *Becerra-Garcia*, tribal rangers stopped a van, on the Tohono O’odham Reservation, that
8 was found to contain twenty illegal aliens being smuggled into the USA. In finding the
9 evidence admissible and the stop proper, the Court stated, at page 1172 of the opinion:

10 “The rangers stopped *Becerra-Garcia* to enforce the criminal
11 trespass laws of the tribal nation.”

12 Thus, once again, the tribal law enforcement officer was investigating a potential tribal
13 law violation – not an Arizona state or federal criminal law violation.

14 And finally, in *Schmuck*, supra, the Washington Supreme Court discussed this area of
15 the law in the context of a person who was stopped on the reservation, by Tribal Law
16 Enforcement Officer Bailey, for suspected violation of the Suquamish Tribe’s traffic laws
17 prohibiting tribal members from speeding and running a stop sign. Upon stopping the vehicle,
18 the driver – Schmuck – was identified as a non-Indian. However, Tribal Officer Bailey also
19 smelled intoxicants coming from Mr. Schmuck, Mr. Schmuck admitted to drinking, and Mr.
20 Schmuck failed a “few field sobriety tests” which he voluntarily took. *Schmuck*, supra, page
21 377. The driver, Mr. Schmuck, was thereupon detained until he could be turned over to the
22 Washington State Patrol for appropriate state criminal charges of DUI under state law.

23 The Court held that the stop for suspected violation of tribal law was proper as follows:

24 “We hold Suquamish Tribal officer Bailey had the requisite
25 authority to stop Schmuck to investigate a possible violation of the
26 Suquamish traffic code and to determine if Schmuck was an
27 Indian, subject to the Code’s jurisdiction.” *Schmuck*, supra, page
28 383.

1 Thus, once again, the tribal officer is making his stop to investigate a possible tribal
2 law violation by an Indian, and not state or federal criminal law violation by a non-Indian.

3 Accordingly, none of the cases cited by the Tribe herein support a claim of “inherent
4 authority” to stop, restrain, detain, and investigate non-Indians for suspected violations of state
5 or federal criminal law – the very thing that the Tribe herein is asking this Court to “clarify
6 and settle” by way of the requested declaration that such is indeed the law. And, also
7 accordingly, the Tribe’s Complaint should therefore be dismissed as failing to state a claim
8 upon which relief can be granted.

9 III

10 ANY ESTABLISHMENT OF A FEDERAL LAW PROVIDING
11 AUTHORITY AND JURISDICTION BY INDIAN TRIBES
12 OVER NON-INDIANS IS WITHIN THE PURVIEW OF
CONGRESS – AND NOT THE COURTS

13 It is clear that Congress has plenary power and authority over Indian tribes, and has the
14 power to establish laws providing for Tribal authority with respect to non-Indians. This was at
15 issue in the case of *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), where the
16 Supreme Court, in ruling that tribes did not have authority to try non-Indians in Indian courts,
17 held, at page 212:

18 “Finally, we are not unaware of the prevalence of non-Indian crime on
19 today’s reservations which the tribes forcefully argue requires the ability
20 to try non-Indians. *But these are considerations for Congress to weigh*
21 *in deciding whether Indian tribes should finally be authorized to try*
22 *non-Indians. They have little relevance to the principles which lead us*
to conclude that Indian tribes do not have inherent jurisdiction to try
and to punish non-Indians.” (Italics supplied)

23 Accordingly, just as in *Suquamish*, supra, where the Supreme Court left it to Congress
24 to weigh the considerations “in deciding whether Indian tribes should finally be authorized to
25 try non-Indians,” the answer to the question here, of whether Indian tribes should have the
26 authority and right to stop, detain, restrain, and investigate non-Indians for suspected
27 violations of state and federal criminal law, should be likewise left to Congress.

IV

THE COURT SHOULD, RESPECTFULLY, DECLINE THE INVITATION OF THE TRIBE FOR A “CLARIFICATION AND SETTLING” OF THE CLAIMED AUTHORITY TO RESTRAIN AND INVESTIGATE NON-INDIANS, ETC., AS IT IS THE COURT’S RIGHT TO DO UNDER THE DECLARATORY RELIEF ACT (28 U.S.C. § 2201), AND DISMISS THIS CASE

The Tribe is here inviting and requesting that this Court issue, and declare, a “clarification and settling” of uncharted federal Indian law, with regard to a claimed inherent right, of all Indian tribes in the United States, to stop, restrain, detain, and investigate non-Indians for suspected violations of state and criminal law – even though the Tribe has no authority to prosecute non-Indians for those violations. See *Suquamish*, supra.

The Tribe invites this “clarification and settling” of this claimed law, even though, as is shown above in the analysis of the *Ortiz-Barraza*, *Becerra-Garcia*, and *Schmuck* cases, there is no Court of Appeals or Supreme Court case holding any aspect of this claimed right.²

The Court is not required to accept this invitation, and has the well established discretion to decline to issue such a dramatic declaration under 28 U.S.C. § 2201. *A. L. Mechling Barge v. United States*, 368 U.S. 324,333 (1961); *Chesebrough Pond’s, Inc v. Faberge, Inc.*, 666 F.2nd 393, 396 (9th Cir. 1982). Under the circumstances of this case, the Court should exercise its sound discretion, decline the Tribe’s invitation to issue a first-impression and dramatic declaration of Indian rights, and leave the matter to Congress – where it, respectfully, properly resides – just as was the case in *Suquamish*, supra.

² That is outside of the right of a tribal law enforcement officer to ultimately detain a non-Indian, who was the subject of a proper stop for a suspected violation by an Indian of tribal law, where the officer could not, of course, determine if the person being stopped was an Indian who would be subject to the tribal law, or a non-Indian who would not be subject to the tribal law; and where, after the proper stop, the non-Indian was found to be in violation of a state or federal law (such as DUI, or smuggling).

1 And – on a final note here – if the Tribe really wants the right to detain, restrain and
2 investigate non-Indians for suspected violation of state and federal criminal law, etc., they can
3 go through the already established procedures to be cross-deputized, and/or otherwise lawfully
4 recognized and empowered by state and/or federal law enforcement, under California Penal
5 Code §§ 830.6 and 830.8, and the BIA procedures for obtaining SLEC (Special Law
6 Enforcement Commission) status from the federal government per 25 C.F.R. § 12.21, et seq.

7 V

8 THE TRIBE’S OPPOSITION TO THE SHERIFF’S MOTION TO
9 DISMISS NOW DEMONSTRATES ANOTHER DEFECT IN
10 THE TRIBE’S REQUEST FOR A “CLARIFICATION AND
11 SETTLING” OF CLAIMED EXISTING AUTHORITY TO
12 DETAIN, FORCIBLY RESTRAIN, AND INVESTIGATE, ETC.,
13 NON-INDIANS FOR SUSPECTED STATE AND FEDERAL
14 CRIMINAL LAW VIOLATIONS: THE LACK OF A CASE AND
15 CONTROVERSY, THAT PRESENTS A JUSTICIABLE CASE,
16 THAT CAN BE DECIDED ON EXISTING AND ACTUAL
17 FACTS; AND NOT IN THE ABSTRACT, AND IN ADVANCE
18 OF ACTUAL EXISTENT FACTS

15 The Sheriff’s motion to dismiss presents the facts behind, and constituting, his 1/6/15
16 letter advising and instructing Tribal law enforcement officers, who are not California peace
17 offices, and are not federal law enforcement officers, to cease their unlawful exercise of
18 California peace officer authority. There is nothing inappropriate about instructing persons
19 who are not California peace officers, and are not federal law enforcement officers, to cease
20 their unlawful exercise of the powers of California peace officers. In issuing this instruction,
21 the Sheriff cites numerous actual facts of such unlawful exercise of California peace officer
22 authority. However and further, and at the same time, in the Sheriff’s 1/6/15 letter, the Sheriff
23 also, and once again, encourages the Tribe’s officers to seek and obtain proper California state
24 and federal SLEC law enforcement status,³ and obtain its accompanying peace officer powers
25

26
27 ³ SLEC is the Special Law Enforcement Commission program of the BIA – whereby tribal law
28 enforcement officers who can pass the requisite background check and other qualifications can
be, and are, properly trained, and provided proper recurrent training, in order to receive a

1 and authority, after receiving the appropriate state and/or federal law officer training.
2 Specifically, the Sheriff states in his 1/6/15 letter, on page two thereof, the following:

3 “This office has always enjoyed a cooperative and professional
4 relationship with Tribal Police which has benefited the community.
5 *This Office has also repeatedly extended its assistance to Tribal*
6 *Police in its efforts to attain peace officer status for its officers*
7 *which would further benefit the community. For whatever*
8 *reasons, these efforts have been ignored as have the warnings*
9 *detailed in this correspondence.*

10 * * *

11 “Nevertheless, this Office strongly believes that Tribal Police, in
12 achieving federal law enforcement certification, would
13 significantly compliment both our agencies’ abilities in serving
14 tribal law enforcement interests. *This office reiterates its*
15 *commitment towards this important goal and extends every*
16 *resource to Tribal Police in its efforts towards that goal. This*
17 *would be a crucial development towards state law enforcement*
18 *certification, as well.” (Italics supplied)*

19 As explained above, state law enforcement certification can be obtained through
20 California Penal Code §§ 830.6 and 830.8. However, rather than go through this established
21 process, the Tribe wants to have this federal Court declare that its officers have no need to go
22 through these established California and federal programs and processes, and thereby receive
23 the required state and federal training, and required recurrent training, that accompanies these
24 programs. Instead, the Tribe wants this Court to declare that (1) the California statutory
25 requirements for achieving peace officer status in California are completely unnecessary and
26 “not applicable” when it comes to tribal police, and that tribal police are automatically granted
27 those powers, without any state approved training, apparently as soon as they are hired by a
28 tribal police department; and (2) that also, the federal SLEC process and program, established
by the federal government through the BIA, is also completely unnecessary, and tribal police
officers will “automatically” have federal law enforcement officer powers to investigate

federal Special Law Enforcement Commission pursuant to 25 C.F.R. §12.21, et seq., as early
mentioned.

1 federal criminal law violations, without any federal training, and again apparently as soon as
2 being hired by a tribal police department.

3 Now: If the Tribe says “no” – we’re not saying “unlimited” and “automatic” California
4 state and federal law enforcement and peace officer powers are being granted to tribal officers
5 immediately upon hiring – then many, perhaps countless, questions arise: What are the
6 conditions necessary for granting them? What training is required, if any? Do the powers
7 ever extend to actions off the reservation? Under what circumstances? Or always? What is
8 the liability for use of excessive force by a tribal officer where the officer seriously injures
9 someone by that excessive force? Who is liable – the officer? The Tribe? What about
10 sovereign immunity of the Tribe? Of the Tribe’s officers? What if the Tribe prescribes tasers
11 or other force for use in situations where other state and federal officers are not to use them?
12 Will the individual tribal officers, because they were then acting under claimed “tribal
13 authority,” be immune for the use of those tasers as tribal officers cloaked with the Tribe’s
14 sovereign immunity (when no other state or federal officer would have been permitted to use
15 the taser)? How about the same questions with regard to the use of firearms?

16 Is this Court willing to try to fashion a “declaration” of the rights that the Tribe here
17 seeks – a “clarification and settling” of the Tribe’s claimed tribal police rights to stop, restrain
18 (forcibly), detain, and otherwise investigate (for what period of time, and how?), under all
19 possible scenarios, non-Indians for possible violations of California state and federal criminal
20 law?

21 It is respectfully submitted that it is not possible to do so. The actual and existing facts
22 of any such tribal claim of right will inform the law as it may be developed; and, again, it,
23 respectfully, at the least, cannot be pre-determined in the abstract and without a concrete set of
24 facts to guide and inform the litigation and its result.

25 The Declaratory Relief Act, 28 U.S.C. § 2201, authorizes relief only in a case of
26 “actual case and controversy.” The statute specifically provides, at subsection (a):

27 “(a) In a case of actual controversy within its jurisdiction . . . any
28 court of the United States, upon the filing of an appropriate

1 pleading, may declare the rights and other legal relations of any
2 interested party seeking such declaration, whether or not further
3 relief is or could be sought. . . .”

4 In addition, the adjudication of rights and obligations, in the absence of a live “case or
5 controversy” would violate the Constitution’s Article III limitation against advisory opinions.
6 *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998); and Rutter: California Practice Guide, Federal
7 Civil Procedure Before Trial, CA & 9th Circuit Edition, § 10:24.2 (updated March 2015).

8 For these reasons, and for the reasons set forth in the moving points and authorities,
9 this Court, respectfully, should not, and also, respectfully, may not, attempt to fashion the
10 dramatic, first-impression and all-encompassing declaration of a “clarification and settling” of
11 claimed “inherent” tribal rights regarding non-certificated and non-credentialed (either state or
12 federal) tribal police officers with regard to their claimed authority in stopping, restraining,
13 detaining, and investigating of possible state and federal criminal law violations by non-
14 Indians.

15 VI
16 JOINDER

17 Sheriff Lutze hereby joins in each of the Replies being concurrently filed herein by the
18 County of Inyo and Inyo County District Attorney Thomas Hardy.

19 VII
20 CONCLUSION

21 By way of all of the foregoing, the motion herein made by defendant Sheriff Lutze for
22 dismissal of the Amended Complaint against him should be granted without leave to amend.

23 Dated: May 26, 2015

24 Respectfully submitted,
LAW OFFICES OF JOHN D. KIRBY,
A Professional Corporation

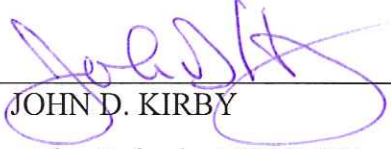
25 By 
26 JOHN D. KIRBY
27 Attorneys for Defendant SHERIFF
28 WILLIAM LUTZE

EXHIBIT A

EXHIBIT A TO REPLY

California Penal Code § 830.6. Deputized or appointed personnel; peace officer status; powers and duties

* * *

(b) Whenever any person designated by a Native American tribe recognized by the United States Secretary of the Interior is deputized or appointed by the county sheriff as a reserve or auxiliary sheriff or a reserve deputy sheriff, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by the county sheriff, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a peace officer pursuant to this subdivision includes the full powers and duties of a peace officer as provided by Section 830.1.

California Penal Code § 830.8. Federal employees; Washoe tribal law enforcement officers

(a) Federal criminal investigators and law enforcement officers are not California peace officers, but may exercise the powers of arrest of a peace officer in any of the following circumstances:

- (1) Any circumstances specified in Section 836 of this code or Section 5150 of the Welfare and Institutions Code for violations of state or local laws.
- (2) When these investigators and law enforcement officers are engaged in the enforcement of federal criminal laws and exercise the arrest powers only incidental to the performance of these duties.
- (3) When requested by a California law enforcement agency to be involved in a joint task force or criminal investigation.
- (4) When probable cause exists to believe that a public offense that involves immediate danger to persons or property has just occurred or is being committed.

In all of these instances, the provisions of Section 847 shall apply. These investigators and law enforcement officers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832, or the equivalent thereof.

Exhibit A
Page 1 of 2

This subdivision does not apply to federal officers of the Bureau of Land Management or the United States Forest Service. These officers have no authority to enforce California statutes without the written consent of the sheriff or the chief of police in whose jurisdiction they are assigned.

25 C.F.R. §12.21 What authority is given to Indian country law enforcement officers to perform their duties?

BIA law enforcement officers are commissioned under the authority established in 25 U.S.C. 2803. BIA may issue law enforcement commissions to . . . tribal full-time certified law enforcement officers to obtain active assistance in enforcing applicable Federal criminal statutes, including Federal hunting and fishing regulations, in Indian country.

(a) BIA will issue commissions to . . . tribal full-time certified law enforcement officers only after the head of the local government or Federal agency completes an agreement with the Commissioner of Indian Affairs asking that BIA issue delegated commissions. The agreement must include language that allows the BIA to evaluate the effectiveness of these special law enforcement commissions and to investigate any allegations of misuse of authority.

* * *

Exhibit A
Page 2 of 2