ORAL ARGUMENT HAS NOT YET BEEN SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-5082

AMADOR COUNTY, CALIFORNIA,
Plaintiff-Appellant,
v.
UNITED STATES DEPARTMENT OF THE INTERIOR; RYAN ZINKE, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE INTERIOR; AND MICHAEL BLACK, IN HIS OFFICIAL CAPACITY AS ACTING ASSISTANT SECRETARY – INDIAN AFFAIRS
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia
No. 1:05-CV-00658 Barbara J. Rothstein,
United States District Judge

BRIEF OF APPELLEES

JEFFREY H. WOOD
Acting Assistant Attorney General

MARY GABRIELLE SPRAGUE
JUDITH RABINOWITZ
KATHERINE W. HAZARD
Attorneys, U.S. Department of Justice
Environment & Natural Resources
Division, Appellate Section
P.O. Box 23795 L'Enfant Plaza Station
Washington, DC 20026
(202) 514-2110
Katherine.Hazard@usdoj.gov

Of Counsel:
DANIEL LEWERENZ
Office of the Solicitor
U.S. Department of the
Interior
Washington, DC

April 13, 2017

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Counsel for the Federal Appellees hereby certifies as follows:

Parties and Amici: Except for the following, Ryan Zinke in his official capacity as Secretary of the Interior, and Michael Black in his official capacity as Acting Assistant Secretary–Indian Affairs (substituted for Sally Jewell and Lawrence S. Roberts, respectively), all parties, intervenors, and amici appearing before the district court and in this Court are listed in the Brief for Amador County.

Rulings Under Review: The rulings under review are the Order Denying Plaintiff's Motion for Summary Judgment and Granting the United States' Cross-Motion for Summary Judgment entered March 16, 2016 (Dkt:84), and the Judgment entered May 10, 2016 (Dkt:86), by the United States District Court for the District of Columbia (Rothstein, J.), in *Amador County v. Jewell* (*Amador Cty. III*), 170 F. Supp.3d 135 (D.D.C. 2016) (Civil Action No. 05-00658).

Related Cases: This case was previously before this Court in *Amador County v. Salazar* (*Amador Cty. II*), 640 F.3d 373 (D.C. Cir. 2011) (D.C. Cir. No. 10-5240) (reversing and remanding) and *Amador County v. U.S. Dep't of the Interior*, 772 F.3d 901 (D.C. Cir. 2014)

(appeal after remand, upholding the district court's denial of Tribe's motion to intervene) (D.C. Cir. No. 13-5245).

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES:

STATUTES:

RULES AND REGULATIONS:

LEGISLATIVE HISTORY:

OTHER AUTHORITIES:

MISCELLEANOUS:

GLOSSARY

APA:	Administrative Procedure Act
Commission:	National Indian Gaming Commission
2004 Compact:	2004 Amendment to the Tribal-State Compact between the Buena Vista Rancheria of Me-Wuk Indians and the State of California
Congressional Clarification:	Pub. L. No. 107-63, § 134 (2001), 115 Stat. 414
County:	Amador County, California
Hardwick Judgment:	*Hardwick v. United States*, No. C-79-1710 (Dec. 22, 1987) (stipulated judgment between Amador County and Indians who owned an interest in the Buena Vista Rancheria)
1983 *Hardwick* Judgment:	*Hardwick v. United States*, No. C-79-1710 (Dec. 22, 1983) (stipulated judgment between the federal government and the plaintiff class of Indians associated with 17 rancherias)
1987 *Hardwick* Judgment:	*Hardwick v. United States*, No C-79-1710 (Dec. 22, 1987) (stipulated judgment between Amador County and Indians who owned an interest in the Buena Vista Rancheria)
HJ:	1987 *Hardwick* Judgment
1983HJ:	1983 *Hardwick* Judgment

IGRA:	Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467 (Oct. 17, 1988)
IRA:	Indian Reorganization Act
NIGC:	National Indian Gaming Commission
NIGC Opinion:	National Indian Gaming Commission Office of General Counsel's Advisory Indian Lands Opinion of June 30, 2005
Rancheria:	Buena Vista Rancheria
Secretary:	Secretary of the Interior
State:	State of California
Tribe:	Buena Vista Rancheria of Me-Wuk Indians

JURISDICTIONAL STATEMENT

The District Court had jurisdiction pursuant to 28 U.S.C. 1331. On March 16, 2016, it issued an order denying the County's motion for summary judgment and granting the United States' cross-motion for summary judgment. Dkt:84.[1] It entered final judgment on May 10, 2016. Dkt:86. Amador County ("County") filed a notice of appeal April 13, 2016 (Dkt:85), which is treated as filed on May 10, 2016, the date judgment was entered. Fed. R. App. P. 4(b)(2). This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF THE ISSUES

In a prior appeal, this Court reversed the district court's dismissal of the case and remanded for determination of: (1) whether a stipulated judgment in *Hardwick v. United States*, No. C-79-1710 (Dec. 22, 1987) ("*Hardwick* Judgment"),[2] precludes the County's challenge to the status

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[1] References to the district court record are by docket number (Dkt) and CM/ECF page number at the top of the page.

[2] As this Court described in its prior opinion, *Hardwick* was a class action suit that resulted in two stipulated judgments relevant to the County's claims here. *Amador Cty. II*, 640 F.3d at 376. The first stipulated judgment was between the federal government and the plaintiff class of Indians associated with 17 rancherias ("1983 *Hardwick* Judgment" or "1983HJ"). The second stipulated judgment was between

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of the Buena Vista Rancheria ("Rancheria") as an Indian reservation; and (2) if not precluded, whether the Rancheria qualifies as an "Indian reservation," as the term is used in the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701-2721. *Amador Cty. v. Salazar ("Amador Cty. II")*, 640 F.3d 373, 382-84 (D.C. Cir. 2011).

The issues presented in this appeal are:

1. Whether the County's challenge to the approval by the Secretary of Interior ("Secretary") of a 2004 Tribal-State Compact Amendment ("2004 Compact") that permitted the Buena Vista Rancheria of Me-Wuk Indians ("Tribe") to operate Class III gaming on the Rancheria remains live, even though the challenged 2004 Compact was superseded, in December 2016, by a new Compact.

2. Whether the *Hardwick* Judgment precludes the County from challenging the status of the Rancheria as an Indian reservation.

Amador County and Indians who owned an interest in the Buena Vista Rancheria ("*Hardwick* Judgment," or "1987 *Hardwick* Judgment" when necessary for clarity, or "HJ"). The County's brief refers to the stipulated judgments as the "Federal Stipulated Judgment" and the "County Stipulated Judgment." The *Hardwick* Judgments are included in the Addendum at 1-23.

3. Whether, if the *Hardwick* Judgment does not preclude the County's challenge, the Secretary's approval of gaming on the Rancheria, based on its status as an Indian reservation, is lawful.

STATUTES AND REGULATIONS

Pertinent statutory and regulatory provisions are included in the Addendum to this brief.

STATEMENT OF THE CASE

A. Overview

Amador County challenged the Secretary's approval (through inaction) of a 2004 Tribal-State Compact Amendment between the Tribe and the State of California ("State") as contrary to IGRA and the Administrative Procedure Act ("APA"), 5 U.S.C. 701-706. The 2004 Compact authorized gaming on the Rancheria, a tract of land purchased in 1927 by the United States as a homeland for the Tribe. The County claims that the Rancheria is not an "Indian reservation," and therefore is not "Indian lands" on which gaming may be authorized under IGRA.

The County sought declaratory and injunctive relief, including: (a) a declaration that the Secretary's approval of the 2004 Compact is void because the Rancheria is not "Indian lands" within the meaning of IGRA; (b) an order directing the Secretary to revoke approval of the

2004 Compact; (c) a declaration that the Rancheria is not "Indian lands" within the meaning of IGRA; (d) a declaration that Interior may not authorize Class III gaming activities[3] on the Rancheria; and (e) an order enjoining the Secretary from authorizing or sanctioning Class III gaming activities on the Rancheria. Dkt:30 at 16-17. This Court's 2011 decision sets forth much of the relevant historical and factual background. *Amador Cty. II*, 640 F.3d at 375-377.

B. Interior disagrees with the County's "Statement of the Case"

Most of the "facts" the County asserts in its "Statement of the Case" are disputed, inadmissible, immaterial, and not properly before this Court. All of the *disputed* facts are *immaterial* and, hence, do not defeat Interior's properly supported motion for summary judgment. *See Scott v. Harris*, 550 U.S. 372, 380 (2007) ("'[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.'") (quoting *Anderson v.*

[3] Class III includes most casino-style gaming. *Amador Cty. II*, 640 F.3d at 376; *see also* 25 U.S.C. 2703(8) (defining "class III gaming" as "all forms of gaming that are not class I gaming or class II gaming"); *id.* § 2703(6)-(7) (defining "class I gaming" and "class II gaming").

Liberty Lobby, Inc., 477 U.S. 242, 247–248 (1986)) (emphases in original).

Many of the County's "facts" are inadmissible, including all those asserted at Br.6-12 ¶¶2-15, ¶23, ¶24 and ¶26, as well as those asserted in ¶1 and ¶16 to the extent they rely for support on Stephen Dow Beckham's Declaration (Dkt:76-2), and Report (Dkt:76-3) (together, "Beckham Materials"). The County never made the Rule 26 disclosures required before introducing expert testimony,[4] which makes exclusion of the Beckham Materials "'automatic and mandatory'" unless the County demonstrated "'that its violation . . . was either [substantially] justified or harmless.'" *Elion v. Jackson*, 544 F. Supp. 2d 1, 6 (D.D.C. 2008) (quoting *NutraSweet Co. v. X-L Eng'rg Co.*, 227 F.3d 776, 785-86 (7th Cir. 2000)).[5] The County did not make that showing. After the United

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[4] Beckham was a retained expert. Dkt:76-2 at ¶¶1-2. As Interior asserted below (Dkt:77 at 19 n.24), the Beckham Report did not satisfy the requirements for retained experts' reports set forth in Rule 26(a)(2)(B); it did not contain "the facts or data" he considered in forming his opinions, a list of his qualifications and publications, a list of other cases in which he testified as an expert, or a statement of his compensation. Fed. R. Civ. P. 26(a)(2)(B)(ii)-(v).

[5] The County's failure to provide this required information–or even to disclose that it had retained an expert–left Interior unable to test the bases of Beckham's opinions or to offer contrary expert opinions. *Cf.*

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States urged that the Beckham Materials be excluded, *see* Dkt:77 at 16 n.24, the County did not defend them. *See* Dkt:81 (no mention of Beckham Materials). The district court opinion, while not expressly excluding the Beckham Materials, did not rely on them.

Many of the alleged "facts," even if admissible, are immaterial. Assertions about the Tribe's membership (Br.8 ¶6), or the occupancy of the Rancheria at any particular time (Br.8-9 ¶¶7-12), are immaterial to the determination that the Rancheria is a "reservation" for purposes of IGRA. Assertions about the extent to which the Tribe "functioned as an Indian tribe" (Br.9-10 ¶¶13-15; Br.12 ¶¶23-24) are immaterial because, as the County admits (Br.3, Br.24-25), the Tribe *is* federally recognized. Assertions that the Rancheria was never taken into trust after settlement of the *Hardwick* litigation (Br.12 ¶¶26; Br.14 ¶¶31; Br.32; Br.35) are immaterial because the parties agree that the Rancheria is not in trust, *Amador Cty. II*, 640 F.3d at 383, but dispute whether it is a "reservation" for purposes of IGRA.

Fed. R. Civ. P. 26(a)(2)(D),(3)(A)-(B),(4); *Minebea Co. v. Papst*, 231 F.R.D. 3, 6 (D.D.C. 2005) (report "filed too late" should be excluded).

The County's assertion (Br.6-7 ¶1, ¶3, ¶4; Br.17 ¶¶44-46; Br.34-35; Br.38) that the Rancheria was purchased with funds appropriated by the Act of Aug. 1, 1914 ("1914 Act"), 38 Stat. 582, 589, is not "undisputed."[6]

What remains of the County's Statement of the Case are the following undisputed, material facts: the United States purchased the Rancheria on May 5, 1927 for homeless Indians (Br.6 ¶1; Dkt:30 at 7 ¶29; Dkt:72 at 8 ¶29); title to the Rancheria has been transferred several times pursuant to (and subsequent to) its unlawful termination and has been owned in fee by the Tribe since 1996 (Br.10 ¶¶16-17;

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[6] The County first identified the 1914 Act as the source of funds in its motion for summary judgment (Dkt:76-1 at 10 ¶1, ¶3, ¶4), without citation. The County (*id.*) incorrectly identified this as an "undisputed fact." A 1958 Senate Report lists the 1914 Act as the source of funds for purchasing the Buena Vista Rancheria. S. Rep. 85-1874 at 17 (1958). But, in 1928, BIA Assistant Commissioner Edgar Meritt indicated that the United States purchased the Rancheria for $3,000 from the 1926 Appropriation. *See Interior Dep't Appropriation Bill, 1929: Hearing Before Subcomm. of House Comm. on Appropriations*, 70th Cong. 80, 157 (1928); *see also* Act of May 10, 1926 ("1926 Act"), 44 Stat. 453, 461. Based on statements at the 1929 Hearing, and the evident need for additional funds nearly-annually beginning in 1914, the 1926 Act likely was the source of funds. Regardless, even under the County's theory, the precise source of funds is immaterial; the language is the same in all the Appropriations Acts from 1914 onward, including the 1926 Act. *See infra* at 9-10.

Br.29-30); the *Hardwick* litigation was finally resolved by an initial settlement in 1983 (Br.10-11 ¶¶18-22) and a subsequent settlement in 1987 (Br.13 ¶¶27-28); the Tribe is a federally recognized tribe (Br.12 ¶25); IGRA provides that federally recognized tribes may operate Class III gaming in accordance with a tribal-state compact (Br.14 ¶¶33-34); the Tribe and the State have entered several such compacts (Br.15-16 ¶¶36-40); the County sued Interior, alleging that the Rancheria is not eligible for gaming (Br.16 ¶41); and the National Indian Gaming Commission ("NIGC") determined that the Rancheria *is* eligible for gaming (Br.16-17 ¶¶42-44), a determination in which Interior concurred (Dkt:11-4 at 12).

C. Appropriations Acts

In 1905, Congress directed its attention to the plight of California Indian tribes and their "catastrophic decline in population following European contact." *City of Roseville v. Norton*, 219 F. Supp. 2d 130, 160 (D.D.C. 2002).[7] It appropriated funds for an investigation into and

[7] *See also City of Roseville v. Norton*, 348 F.3d 1020, 1022 (D.C. Cir. 2003) ("*City of Roseville II*") (affirming, describing history of Auburn Band as formed from families of Maidu and Miwok Tribes who managed to survive "the depredation that came with the settlement of

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report on the "existing conditions of the California Indians." Act of March 3, 1905, 33 Stat. 1048, 1058. The report found that Indians "had been forced from agriculturally productive lands and were then living on worthless lands in distressing conditions." *Duncan v. Andrus*, 517 F. Supp. 1, 2 (N.D. Cal. 1977). In 1906, responding to the report, Congress included in the Indian Office Appropriations Act of 1906 ("1906 Act"), 34 Stat. 325, 333, an appropriation authorizing Interior to purchase land for California Indians. The 1906 Act appropriated $100,000

> to purchase for the use of the Indians of California now residing on reservations which do not contain land suitable for cultivation, *and for* Indians who are not now upon reservations in said State, suitable tracts or parcels of land, water, and water rights in said State of California . . . , *and fence, survey, and mark the boundaries of such Indian reservations* in the State of California as the Secretary of the Interior may deem proper.

34 Stat. 333 (emphasis added). Two years later, Congress appropriated an additional $50,000, using the same language. Act of Apr. 30, 1908 ("1908 Act"), 35 Stat. 70, 76. Congress again appropriated funds to

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California"); S. Rep. 103-340 at 3 (1994) (legislation restoring Auburn Rancheria, noting that by late 1800s, "homelessness, hunger, disease and extermination had reduced the Indian population in California to approximately 15,000," from approximately 350,000 at the time of European contact in the mid-1500s).

purchase lands for California Indians beginning in 1914, followed by appropriations nearly every year into the 1930s.[8] The 1914 Act, and subsequent appropriations acts, provided funds "for the purchase of lands for the homeless Indians in California, including improvements thereon, for the use and occupancy of said Indians." Accordingly, Interior purchased rancherias in Northern and Central California for California Indians, including the Buena Vista Rancheria.

D. The Indian Reorganization Act

The 1930s and 1940s "marked a dramatic shift in Federal Indian policy" toward support of "tribal-self-determination, self-government, economic development, and the restoration or replacement of tribal homelands, most notably through Congress's enactment in 1934 of the

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[8] *See* 1914 Act, 38 Stat. at 589; Act of May 18, 1916, 39 Stat. 123, 132; Act of Mar. 2, 1917, 39 Stat. 969, 975; Act of May 25, 1918, 40 Stat. 561, 570; Act of June 30, 1919, 41 Stat. 3, 12; Act of Feb. 14, 1920, 41 Stat 408, 417; Act of Mar. 3, 1921, 41 Stat. 1225, 1234; Act of May 24, 1922, 42 Stat. 552, 567; Act of Jan. 24, 1923, 42 Stat. 1174, 1188; Act of June 5, 1924, 43 Stat. 390, 398-99; Act of Mar. 3, 1925, 43 Stat. 1141, 1149; 1926 Act, 44 Stat. at 461 (appropriating $7,000); Act of Jan. 12, 1927, 44 Stat. 934, 941; Act of Mar. 7, 1928, 45 Stat. 200, 206; Act of Mar. 4, 1929, 45 Stat. 1562, 1568; Act of May 14, 1930, 46 Stat. 279, 286; Act of Feb. 14, 1931, 46 Stat. 1115, 1121. These Appropriations Acts, commencing in 1906, are referred to collectively as the "Appropriations Acts.

[Indian Reorganization Act ("IRA")]." *Morton v. Mancari*, 417 U.S. 535, 542 (1974). Among other provisions, the IRA authorized (but did not require) tribes to organize, or reorganize, by adopting constitutions and forming business corporations. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 151 (1973) (IRA sought to encourage tribes "to revitalize their self-government"). Section 5, 25 U.S.C. 5108 (*previously codified at* § 465), authorized the Secretary to take land into trust for the benefit of Indian tribes and individual Indians, and Section 7, 25 U.S.C. 5110 (*previously codified at* § 467), authorized the Secretary to proclaim new reservations or add land to existing reservations.[9]

Of particular relevance here, Section 18 required the Secretary to hold elections to give Indians on reservations the opportunity to opt out of the IRA. 25 U.S.C. 5125 (*previously codified at* § 478) (IRA "shall not apply to any *reservation* wherein a majority of the adult Indians . . . shall vote against its application.") (emphasis added). Interior held elections at dozens of California rancherias, including the Buena Vista

[9] The IRA, 48 Stat. 984, is codified as amended at 25 U.S.C. 5101 *et seq*., *previously codified at* 25 U.S.C. 461 *et seq*. The IRA was recodified in 2016. This Brief uses the current code citations, with parallel citations to the previous cites.

Rancheria, consistent with its view that rancherias were reservations for purposes of the IRA. *See* Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A., U.S. Indian Service Tribal Relations Pamphlets* 1 (1947) at 14-16 ("Haas Report") (vote taken on Buena Vista Rancheria on June 11, 1935).[10]

E. The California Rancheria Act

During the late 1940s through the early 1960s, federal policy shifted toward assimilating Indians into the dominant society and terminating the federal trust-relationship with tribes. Consistent with this policy, in 1958 Congress enacted the California Rancheria Act ("Rancheria Act"). Act of Aug. 18, 1958, 72 Stat. 619. It "authorized the Secretary to terminate the federal trust relationship" with many California tribes, "including the Me-Wuk Tribe, and to transfer tribal lands from federal trust ownership to individual fee ownership." *Amador Cty. II*, 640 F.3d at 375; 72 Stat. at 619-21. The Rancheria Act identified 41 rancherias (including the Buena Vista Rancheria) subject to dissolution. In 1964, Congress amended the Rancheria Act,

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[10] Available at http://www.doi.gov/sites/doi.gov/files/migrated/library/internet/subject/upload/Haas-TenYears.pdf.

extending its provisions to California rancherias and reservations not originally covered by the Act. 78 Stat. 390 (1964); H. Rep. 88-1305 at 3 (1964).

Section 3 of the Rancheria Act, both as originally enacted and as amended, required the United States, prior to distributing any rancheria lands, to install sanitation facilities and irrigation and domestic water systems, and to fulfill other requirements such as completing boundary surveys and roads. 72 Stat. at 619-20; 78 Stat. 390.

In 1959, the Secretary deeded the 67.5-acre Rancheria in fee to two tribal members (Louie and Annie Oliver). Dkt:11-4 at 3; Dkt:39-4. In 1961, the Secretary announced that the Tribe and its Rancheria had been terminated pursuant to a distribution plan. 26 Fed. Reg. 3073 (Apr. 11, 1961).

F. The *Hardwick* Litigation

Although the Rancheria Act authorized the termination both of the Rancheria as a reservation, and of the trust relationship with its Indian residents, the United States failed to meet the requirements of Section 3. To remedy its failures, the United States agreed through a

litigation settlement to restore the Tribe's status as a federally recognized tribe and to reverse the effects of the land distribution. *Amador Cty. II*, 640 F.3d at 375-76.[11]

More specifically, in 1979, members of the Tribe joined Indians from sixteen other rancherias in a class action lawsuit against the United States and officials of the counties in which the rancherias were located, *Hardwick v. United States*, No. C-79-1710 SW (N.D. Ca. filed 1979). The lawsuit sought to reverse the deleterious effects of the Rancheria Act by "unterminat[ing]" the rancherias, and by (*inter alia*) requiring the Secretary and county defendants (including Amador County) "to treat the subject Rancherias as Indian Reservations in all respects." *Hardwick* Dkt:81 at 29 ¶7e; Dkt:185 at 27 ¶3.

1. The 1983 Hardwick Judgment.

The United States settled with the plaintiff-Indians affiliated with 17 rancherias, including the Buena Vista Rancheria. That settlement was entered as a stipulated judgment in December 1983. 1983HJ. The 1983 *Hardwick* Judgment required the United States to restore

[11] Many other tribes and rancherias have been restored through litigation or legislation. *See, e.g., City of Roseville II*, 348 F.3d at 1022 (discussing restoration of Auburn Band).

"benefits or services provided or performed by the United States for Indians because of their status as Indians" and to restore their former collective status through inclusion on the Secretary's Federal Register list of recognized tribal entities. 1983HJ:¶¶3, 4.[12] The 1983 *Hardwick* Judgment also specified that the court would retain jurisdiction to confirm, "in further proceedings," the extent to which the boundaries of the seventeen rancherias "shall be restored." 1983HJ:¶5.

2. The 1987 Hardwick Judgment.

In 1987, Amador County and the Buena Vista members of the plaintiff class reached the separate settlement anticipated by the 1983 *Hardwick* Judgment. In this second stipulated judgment, entered by the district court on December 30, 1987,[13] Amador County (specifically, the County's Tax Collector, Assessor, and Board of Supervisors, *see* HJ:§1¶B)) agreed to entry of judgment on specified terms, including:

> [§2B(2)] The plaintiff Rancheria and the Plaintiffs were never and are not now lawfully terminated under the California Rancheria Act. . .

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[12] *See* 50 Fed. Reg. 6,055 (Feb. 13, 1985) (including Tribe on list of recognized tribes).

[13] *See Hardwick* Dkt:228.

> [§2B(3)] As a consequence this Court has authority as a court of equity to remedy the effects of the premature and unlawful termination of the plaintiff Rancheria and the Plaintiffs to the extent that it can do so without adversely affecting the interests of third party purchasers for value of Rancheria parcels.
>
> [§2C] The original boundaries of the plaintiff Rancheria . . . are hereby restored, and all land within these restored boundaries of the plaintiff Rancheria is declared to be "Indian Country."[14]
>
> [§2¶D] The plaintiff Rancheria shall be treated by the County of Amador . . . as any other federally recognized Indian Reservation, and all of the laws of the United States that pertain to federally recognized Indian Tribes and Indians shall apply to the Plaintiff Rancheria and the Plaintiffs.
>
> [§2¶H] County maintained roads which service the plaintiff Rancheria shall be deemed to have been and now are lawfully owned and maintained by the County of Amador.

HJ:4, 6 (underline in original; footnote added) (*see* Addendum for full text of *Hardwick* Judgments).

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[14] The *Hardwick* Judgment (§1¶G) defines "Indian Country" as defined in 18 U.S.C. 1151, the Indian Major Crimes Act. Section 1151 defines "Indian Country" to include "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent." Simply put, land within the limits of a reservation is "Indian Country" regardless of who owns title to it. *See Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351, 356-57 (1962).

Title to all acreage of the Rancheria was transferred from an individual owner (Donna Marie Potts) to the Tribe on August 1, 1996. Dkt:39-5, 39-6, 39-7.

G. Indian Gaming Regulatory Act.

In 1988, Congress enacted IGRA "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. 2702(1); *see Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 865 (D.C. Cir. 2006); *City of Roseville II*, 348 F.3d at 1028. IGRA divides gaming into three classifications, only one of which—Class III—is at issue in this case. *Amador Cty. II*, 640 F.3d at 376. Class III gaming is lawful on Indian lands only if: (1) authorized by a tribal ordinance or resolution approved by the NIGC (25 U.S.C. 2710(d)(1)(A)); and (2) conducted in conformance with a Tribal-State compact (*id.* § 2710(d)(1)(C)).

Once a tribe has submitted a Tribal-State compact, the Secretary has three choices: approve the compact, *id.* § 2710(d)(8)(A); disapprove the compact, *id.* § 2710(d)(8)(B); or take no action, in which case the compact is "deemed approved" after 45 days, *id.* § 2710(d)(8)(C). The

compact takes effect, if approved or deemed approved, when notice of approval is published in the Federal Register. *Id.* § 2710(d)(8)(D), (3)(B); *Amador Cty. II*, 640 F.3d at 377.

In addition, "and critical to this case, IGRA provides for gaming only on 'Indian lands' governed by the tribe." *Amador Cty. II*, 640 F.3d at 376-77; 25 U.S.C. 2710(d)(1). IGRA defines "Indian lands" to include "all lands within the limits of any Indian reservation."[15] 25 U.S.C. 2703(4)(A). IGRA does not define the term "Indian reservation."

In 2001, Congress clarified that "[t]he authority to determine whether a specific area of land is a 'reservation' for purposes of [IGRA], was delegated to the Secretary . . . of the Interior on October 17, 1988 . . ." Pub. L. No. 107–63, § 134 (2001), 115 Stat. 414 ("Congressional Clarification"); *see also City of Roseville II*, 348 F.3d at 1029 (affirming that Secretary, not NIGC, has authority to determine whether land is a "reservation" for purposes of IGRA).

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[15] The definition of "Indian lands" also includes tribal trust and restricted fee lands over which the tribe exercises governmental power. 25 U.S.C. 2703(4)(B). Because the Rancheria is owned in fee by the Tribe, rather than held in trust by the United States, it "can qualify as 'Indian land' only if it is an 'Indian Reservation.'" *Amador Cty. II*, 640 F.3d at 383.

In 2008, Interior promulgated regulations addressing gaming on lands acquired in trust after October 17, 1988, the date of IGRA's enactment. *See* 25 U.S.C. 2719. Those regulations define the term "reservation" to include "[l]and of Indian colonies and rancherias (including rancherias restored by judicial action) set aside by the United States for the permanent settlement of the Indians as its homeland." 25 C.F.R. 292.2.

H. The Tribal-State Compacts of 2000, 2004, and 2016

In the late 1990s, the Tribe began planning a Class III gaming operation and initiated the process of acquiring state and federal approval pursuant to IGRA. *Amador Cty. II*, 640 F.3d at 376-7.

1. 2000 Compact:

In 1999, along with dozens of other tribes in California, the Tribe and the State negotiated a Class III gaming compact. *Rincon Band of Luiseno Mission Indians v. Schwarzenegger*, 602 F.3d 1019, 1023 (9th Cir. 2010). In May 2000, the Secretary approved the compact ("2000 Compact") as well as substantially identical compacts for over fifty other tribes in California. 65 Fed. Reg. 31,189 (May 16, 2000). The 2000 Compact specified that the gaming facilities would be located on

the Tribe's "reservation land, . . . in Amador County." AR38. Amador County did not challenge the Secretary's approval of the 2000 Compact.

2. 2001 Intergovernmental Services Agreement:

In July 2001, the County and Tribe entered into an Intergovernmental Services Agreement ("2001 Intergovernmental Agreement") to mitigate potential impacts arising from gaming on the Rancheria. Dkt:77-1. The Agreement, as approved by the County Board of Supervisors, stated that the Tribe intended to open a Class III gaming facility "on Indian Lands within the Reservation" and that construction of the facility would be "on approximately 30 acres located inside the Tribe's Reservation." Dkt:77-1 at 3, 4.

3. 2001 NIGC approval of gaming ordinance:

On September 25, 2001, NIGC approved the Tribe's site-specific tribal gaming ordinance. 67 Fed. Reg. 54,823-25 (2002).[16] That approval constituted recognition by NIGC of the Rancheria as Indian

[16] *See also* https://www.nigc.gov/images/uploads/gamingordinances/bnavstrnchramewukindns-amendappr092501.pdf (gaming ordinance and NIGC's approval letter) (§2.37.3 of the ordinance defines "Indians Lands" to mean, *inter alia*, "the approximately 67.5 acres located in" Amador County; §4.4 refers to "residents of the Reservation").

lands under IGRA. Amador County did not challenge NIGC's approval of the ordinance.

4. 2004 Compact:

In 2004, the Tribe and the State negotiated a Compact Amendment, which specified that the Tribe may operate gaming devices "only on Indian lands within the boundaries of its rancheria." AR91 (§4.3.5). The Tribe submitted the 2004 Compact to the Secretary for review. Upon expiration of the 45-day review period, the 2004 Compact was deemed approved and the Secretary published the Notice of Approval in the Federal Register. 69 Fed. Reg. 76,004 (Dec. 20, 2004).

5. NIGC's 2005 Indian Lands Opinion:

The County (in October 2004) and the Tribe (in December 2004) asked NIGC for an Indian lands determination. AR204; Dkt:11-4 at 1. On June 30, 2005, the NIGC Office of General Counsel issued an advisory legal opinion ("NIGC Opinion"), in which the Interior Solicitor's Office concurred, concluding that the Rancheria is IGRA-qualified "Indian lands."[17] Dkt:11-4.

[17] The Tribe's December 2004 request was a renewal of an earlier request. *See* Dkt:11-4 at 1.

6. 2016 Compact:

In 2016, the Tribe and State entered into a new Compact, which became effective December 5, 2016, and supersedes any prior agreements. 81 Fed. Reg. 87585 (Dec. 5, 2016).[18] Like the 2000 and 2004 Compacts, it authorizes operation of Class III gaming only on "eligible Indian lands located within the boundaries of the Buena Vista Rancheria of Me-Wuk Indians Reservation." 2016 Compact at 9 (§4.2).

I. Procedural History

1. Prior Rulings

The procedural history of this case is described in the Court's 2011 decision. *See Amador Cty. II*, 640 F.3d at 377. To summarize, the County filed this lawsuit on April 1, 2005 (Dkt:1), and filed an amended complaint on August 23, 2007 (Dkt:30). The district court dismissed the case for lack of a reviewable final agency action. *Amador Cty. v. Kempthorne*, 592 F. Supp. 2d 101 (D.D.C. 2009). Amador County appealed. In May 2011, this Court reversed, holding that the County had standing, and that the Secretary's "deemed approval" of the 2004

[18] *See* 2016 Compact at 101 (§18.2) (http://www.cgcc.ca.gov/documents/compacts/amended_compacts/Buena_Vista_Compact_2016.pdf

Compact is judicially reviewable. *Amador Cty. II*, 640 F.3d at 383. The Court remanded for the district court to determine the scope of the preclusive effect of the *Hardwick* Judgment on the County and, if reachable, the merits of the County's claim that the Rancheria is not an "Indian reservation." *Id.* at 383-84.[19]

2. District Court Decision on Remand

The district court, considering "the scope of [Amador] County's intent to be bound" (slip op. 7), concluded that "the *Hardwick* Judgment unambiguously sets forth the parties' intent that the County would treat the Buena Vista Rancheria as a reservation," *id.* at 12-13, with respect to the application of "all of the federal laws that apply to Indians." *Id.* at 10. The court further determined that, even were it to find the *Hardwick* Judgment ambiguous, the extrinsic evidence demonstrated the County's intent to treat the Rancheria as a reservation in contexts other than taxation. *Id.* at 14-15. The court found no basis to carve out federal gaming laws from the "all laws" provision of the Judgment. *Id.* at 15. Finally, the court concluded, in

[19] In November 2011, following remand, the Tribe moved to intervene. The district court denied the motion as untimely. This Court affirmed. *Amador Cty. v. U.S. Dep't of the Interior*, 772 F.3d 901 (D.C. Cir. 2014).

the alternative, that the Secretary may approve a compact governing gaming on the Rancheria based on the land's status as a reservation. *Id.* at 16-17.

STANDARD OF REVIEW

1. Mootness: The existence of subject matter jurisdiction, including the question whether a case presents a live controversy, is considered *de novo*. *Nat'l Air Traffic Controllers Ass'n v. Fed. Serv. Impasses Panel*, 606 F.3d 780, 786 n.* (D.C. Cir. 2010).

2. Preclusive Effect of the Hardwick *Judgment:* The scope of the preclusive effect of the *Hardwick* Judgment is determined by the parties' intent to be bound in future actions. *Amador Cty. II*, 640 F.3d at 384. Intent is measured by ordinary contract principles. *Id.* The question, in determining intent, is "what a reasonable person in the position of the parties would have thought the language meant." *Richardson v. Edwards*, 127 F.3d 97, 101 (D.C. Cir. 1997); *United States v. Volvo Powertrain Corp.*, 758 F.3d 330, 339 (D.C. Cir. 2014) (same).[20]

[20] The district court concluded that California law governs interpretation of the *Hardwick* Judgment. Slip op. 8 n.2 (citing *Makins v. District of Columbia*, 277 F.3d 544, 548 (D.C. Cir. 2002)). The County (Br. 23) also asserts that California law applies. *Makins* involved

Cont…

That is a question of law, which this Court reviews *de novo*. *Id.* However, if a provision is found to be ambiguous, warranting consideration of extrinsic evidence, intent becomes a question of fact. *Amador Cty. II*, 640 F.3d at 384 ("intent is a question of fact that may turn not only on language of the agreement, but also on extrinsic evidence not yet in the record"); *NRM Corp. v. Hercules, Inc.,* 758 F.2d 676, 682 (D.C. Cir. 1985) ("Only if the court determines as a matter of law that the agreement is ambiguous will it look to extrinsic evidence of intent to guide the interpretive process."). Factual findings are reviewed for clear error. *United States v. Brockenborrugh*, 575 F.3d 726, 738 (D.C. Cir. 2009).

3. Reservation status of the lands: The meaning of "reservation" under IGRA presents a question of statutory interpretation and is a

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interpretation of a settlement agreement (not a consent decree or stipulated judgment) and it recognized that local law would *not* apply in cases in which a settlement is sought to be enforced against the United States. In interpreting consent decrees involving the United States, this Court has applied federal law, not local law. *See, e.g., Richardson*, *Volvo Powertrain*. That is appropriate here, where the Court is interpreting a stipulated judgment in a lawsuit by Indians against the United States and numerous counties, and the stipulated judgment between the Indians and Amador County is part of the larger federal suit. Regardless, the relevant legal principles governing contract interpretation appear to be the same under California and federal law.

question of law, which this Court reviews *de novo*. The Court reviews Interior's interpretation of IGRA under the familiar *Chevron* analysis. *See Citizens Exposing Truth About Casinos v. Kempthorne*, 492 F.3d 460, 465 (D.C. Cir. 2007) (citing *Chevron v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)); *see also id.* at 465-67 (applying *Chevron* deference to Interior's interpretation of "initial reservation" in IGRA). Because IGRA does not define the term "reservation," the Court must determine "if the agency's interpretation is permissible, and if so, defer to it." *Confederated Tribes of Grand Ronde Community v. Jewell* (*"Grand Ronde"*), 830 F.3d 552, 558 (D.C. Cir. 2016). In reviewing the agency's interpretation, the Court does so "mindful of the governing canon of construction requir[ing] that statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Id.* (internal quotation marks omitted).

SUMMARY OF ARGUMENT

Under this Court's precedent, the County's claims regarding the Secretary's authority to approve Class III gaming on the Rancheria appear to remain "live," although its challenge to the 2004 Compact is now moot. *See, e.g., Safari Club Int'l v. Jewell*, 842 F.3d 1280, 1287

(D.C. Cir. 2016); *City of Houston v. Dep't of Housing and Urban Development*, 24 F.3d 1421, 1428-29 (D.C. Cir. 1994).

Amador County is precluded by the *Hardwick* Judgment from challenging the status of the Rancheria as a reservation. The *Hardwick* Judgment manifests the parties' clear intent that the County treat the Rancheria as an Indian reservation in all future dealings concerning application of "all of the laws of the United States that pertain to federally recognized Indian Tribes and Indians." IGRA is such a law. Nothing in the text, structure, or purpose of the *Hardwick* Judgment supports the County's argument that its commitment to treat the Rancheria as a "reservation" was intended to be limited to tax matters or warrants excepting IGRA from its purview.

Moreover, even if there were any ambiguity, the extrinsic evidence shows that the County's narrow interpretation of §2¶D of the *Hardwick* Judgment is inconsistent with the *Hardwick* Plaintiffs' purpose in bringing the suit and with the County's more-than-thirty-year practice of treating the Rancheria as a reservation and Indian country. Most notably, the County entered into the 2001 Intergovernmental Agreement with the Tribe, regarding development of gaming on the

"reservation" (as the Agreement refers to the Rancheria). This "course of conduct" under the *Hardwick* Judgment is strong evidence of the parties' intent. *Entergy Serv. v. FERC*, 568 F.3d 978, 984-85 (D.C. Cir. 2009).

If the County is not precluded from challenging the status of the Rancheria, this Court should uphold the Secretary's authority to approve gaming on the Rancheria based on its status as an Indian reservation. The Rancheria was a reservation from the time the United States purchased the tract in 1927, until its unlawful termination in 1961. The Rancheria was restored to reservation status through the 1983 and 1987 *Hardwick* Judgments. Congress, Interior, and the Courts have consistently recognized the California rancherias as reservations. Interior's interpretation of the term "reservation" in IGRA as including rancherias is reasonable, entitled to deference, and consistent with the canon of construction requiring "that statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.'" *Grand Ronde*, 830 F.3d at 558. The County's argument that distinctions must be made among rancherias based on the year of the Appropriation used for purchase has

no support in the actions of Congress, Interior, or the Courts. This Court should affirm the judgment of the district court.

ARGUMENT

I. AMADOR COUNTY'S GENERAL CLAIMS REMAIN JUSTICIABLE UNDER THIS COURT'S PRECEDENT.

The County's opening brief does not address the impact of the new Compact on the viability of this appeal. Because the 2004 Compact was superseded by a new compact, any claims specific to the 2004 Compact are now moot.

Interior presumes, however, that the County seeks to have this Court resolve its general claims regarding the Secretary's authority to approve Class III gaming on the Rancheria. The County's complaint alleged that the Secretary *may not* lawfully approve Class III gaming on the Rancheria because the Rancheria is not a reservation within the meaning of IGRA.

Under Circuit precedent, "'if a plaintiff challenges both a specific agency action and the *policy* that underlies the action, the challenge to the policy is not necessarily mooted merely because the challenge to the particular agency action is moot.'" *Safari Club*, 842 F.3d at 1287 (quoting *City of Houston*, 24 F.3d at 1428-29). In this "ongoing-policy"

context, the Court first considers whether the County has standing to challenge Interior's recognition of the Rancheria as a reservation. This Court held that the County has standing to challenge the Rancheria's "Indian lands" status through a challenge to the 2004 Compact. *Amador Cty. II*, 640 F.3d at 378. The new Compact, which also permits Class III gaming on the Rancheria, does not diminish the imminence or concreteness of any alleged threat to the County's interests.

The Court next evaluates whether the case has become moot. *Safari Club*, 842 F.3d at 1285-88. "A case becomes moot . . . when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id.* at 1287 (internal quotation marks omitted). In *Safari Club*, this Court held that the case presented live claims because the relief plaintiffs sought "extend[ed] well beyond" the "now-expired 2014 findings" and plaintiffs "more broadly" challenged the standards applied by the federal agency. *Id.* at 1287-88. Similarly, here, the conduct challenged by the County extended beyond the 2004 Compact to include "any action by the Secretary which would allow the Tribe to conduct Class III gaming on the Buena Vista Rancheria" (Count VI). Dkt:30 at 14 ¶79. The County sought relief in

the form of: declarations that the Rancheria is not "Indian lands" (Count IV), and that the Secretary may not authorize Class III gaming-activities on the Rancheria (Count IV); and injunctions prohibiting Interior from "authorizing or sanctioning" gaming on the Rancheria (Counts VI and VIII). Dkt:30 at 14-16. Those claims, concerning the Rancheria's legal status, remain justiciable.

II. AMADOR COUNTY IS PRECLUDED BY THE *HARDWICK* JUDGMENT FROM CHALLENGING THE STATUS OF THE BUENA VISTA RANCHERIA AS AN INDIAN RESERVATION.

Preclusion is appropriate if the stipulated judgment "clearly manifests the parties' intent to be bound in future actions.'" *Amador Cty. II*, 640 F.3d at 384. The parties' intentions are evaluated based on ordinary contract principles, *id.*, giving "effect to the contractual rights and expectations of the parties." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010). The stipulated judgment must be construed "as it is written." *Richardson*, 127 F.3d at 101. Ordinary "aids of construction," such as the circumstances surrounding the formation of a stipulated judgment or consent order, may be consulted. *Id.* But ultimately the question for the Court is what a reasonable

person in the position of the parties would have thought the language meant. *Id.*

A. The text, structure, and purpose of the *Hardwick* Judgment manifest the parties' intent that the County treat the Rancheria as an Indian reservation in all future actions.

The plain language of the *Hardwick* Judgment demonstrates that the County intended to treat the Rancheria "as any other federally recognized Indian Reservation" for all purposes. HJ:§2D. The County agreed that "all of the laws of the United States that pertain to federally recognized Indian Tribes and Indians shall apply to the plaintiff Rancheria and the Plaintiffs." *Id.* "All of the laws" necessarily includes those statutes, regulations, and judicial rulings already in effect, including the Supreme Court's decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), which held that state laws regulating gaming could not be enforced on Indian reservations without Congress's express consent (*id.* at 221-22). The Supreme Court decided *Cabazon* before the County signed the 1987 *Hardwick* Judgment. The "all of the laws" provision also is most reasonably understood as including future-enacted laws, including IGRA. This natural reading of Paragraph D effectuates the broader commitments in

§2¶B(3) "to remedy the effects of the premature and unlawful termination" of the Rancheria and §2¶C to restore "the original boundaries" of the Rancheria and "declare" it "to be Indian Country." *See supra* at 15-16.

1. The County's agreement to treat the Rancheria as a reservation cannot reasonably be interpreted as applying only to tax matters.

The County's argument that it agreed to treat the Rancheria as an Indian reservation "for tax purposes only" (Br.4), and not in any other context (Br.21), cannot be squared with the text, structure or purpose of the *Hardwick* Judgment. *See supra* at 15-16 (excerpts of HJ) and Addendum:1-23 (full text of *Hardwick* Judgments). Three paragraphs in the *Hardwick* Judgment address tax matters,[21] but the County ignores the critical preceding paragraphs B(2), B(3), and C, which plainly do not concern tax matters. Had the parties intended that the

[21] These paragraphs address real property taxes collected (HJ§2¶E), unpaid property taxes not yet collected (HJ§2¶F), and limitations on the imposition of taxes in the future (HJ§2¶G).

The County now claims (Br.14) that, under the *Hardwick* Judgment, it need not forgo taxation because the land is not in trust. But the County's taxation authority is not an issue before this Court. In any event, the County's assertion is wrong. It agreed not to tax parcels owned by an Indian or tribe and for which an exemption form was filed within the tax year. HJ§2¶G.

County treat the Rancheria as a reservation solely for tax purposes, paragraphs B(2), B(3), and C would be superfluous. Similarly, had the purpose of the Judgment been solely to resolve tax matters, there would have been no reason for the parties to include §2¶H, specifying that County-maintained roads that service the Rancheria "shall be deemed to have been and now are lawfully owned and maintained by the County." HJ:§2¶H.

Under cardinal principles of contract interpretation, the Judgment must be read to give effect to all of its provisions. *Segar v. Mukasey*, 508 F.3d 16, 22 (D.C. Cir. 2007). That principle bars a court from attributing to a provision a meaning that would read other text out of the contract, *id.* at 24, as would the County's interpretation of §2¶D.[22]

[22] The County (Br.4) argues for the first time in this appeal that the County Board of Supervisors was included as a party in the Judgment (*see* HJ§1¶B) only in its supervisory capacity over the other defendants: the tax collector and tax assessor. The County has provided no support for that factual assertion which, even if true, could not overcome the unambiguous language of the text. Moreover, the assertion is belied by obligations in the Judgment that are plainly beyond the purview of County tax officials, for example road ownership and maintenance (HJ§2¶H) and by the Board of Supervisor's full role in approving the *Hardwick* Judgment (Dkt:13-2 at 8).

Notably, the text does not include, as it readily could have, language specifying that the County agreed to treat the Rancheria as a reservation "for tax purposes only." Absent such restrictive language, the provision must be interpreted as having the broad effect yielded by its natural reading. *See U.S. v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236-37 (1975) (an "instrument must be construed as it is written, and *not as it might have been written*") (emphasis added); Restatement (Second) of Contracts § 203 (Standards of Preference in Interpretation).

2. The County's agreement to treat the Rancheria as a reservation applies to the Secretary's authorization of gaming under IGRA.

The use of the phrase "shall be treated" in §2¶D demonstrates that the Judgment was intended to bind the parties' future relations. HJ:§2¶D. That binding commitment to treat the Rancheria as a reservation applies to "all laws pertaining to federally recognized Indian Tribes." *Id.*

The County argues (Br.21) that even if the *Hardwick* Judgment applies to some future actions, it cannot reasonably be interpreted to apply to IGRA, which was enacted after the County executed the *Hardwick* Judgment. But the text of the Judgment provides no basis

for carving out IGRA, or any other generally applicable federal Indian law, from the "all of the laws" language in §2¶D.

The County had every incentive to litigate the status of the Rancheria because the land status would determine the rights and obligations of each party, prospectively. In fact, the County could have litigated the Rancheria's status specifically with respect to gaming. As the district court noted (slip op. at 15), one can reasonably assume that the County was aware in April 1987 (prior to signing the *Hardwick* Stipulation) of the Ninth Circuit's 1986, and Supreme Court's February 1987, rulings in *Cabazon*. And, indeed, contrary to its present position, in the past the County has recognized the status of the Rancheria as a reservation specifically in the context of IGRA. *See supra* at 20 and *infra* at 43.

3. The County is precluded from challenging the United States' treatment of the Rancheria as a reservation.

The County next contends (Br.22, 24) that it may challenge the *Secretary*'s treatment of the Rancheria as a reservation, even if *it* must treat the Rancheria as a reservation (including for purposes of IGRA). That argument is not now available to the County because it waived the

argument by not making it below. *See Potter v. D.C.*, 558 F.3d 542, 547 (D.C. Cir. 2009).

Regardless, the County's convoluted logic fails. The County's suit violates its agreement to treat the Rancheria as a reservation. Moreover, the County expressly agreed that the "plaintiff Rancheria *shall be treated* by the County of Amador *and the United States of America*, as any other federally recognized Indian Reservation." HJ:§2¶D (underline in original, italics added).[23] Accordingly, the County is precluded from challenging the United States' authority to treat the Rancheria as a "reservation."

4. The County's narrow interpretation is inconsistent with the Judgment's central purpose of restoring the Rancheria to its pre-termination status.

The stated purpose of the *Hardwick* Judgment was for the court to exercise its equitable power "to remedy the effects of the premature and unlawful termination of the plaintiff Rancheria and the Plaintiffs," to the extent that it could do so, and to "restore" the "original boundaries

[23] The issue is not whether the County could bind the United States; rather, the County agreed that both it and the United States would treat the Rancheria as a reservation. Thus, the County is precluded from arguing that the United States may not treat the Rancheria as a reservation.

of the plaintiff Rancheria" and declare all land within those restored boundaries to be "Indian Country." HJ:§2¶¶(B)(3), C. Merely resolving tax matters, as the County now self-servingly asserts it was doing, would not remedy the effect of the unlawful termination.

The *Hardwick* Judgment, read in context, was a continuation and finalization of the agreement already reached between the plaintiff class and the federal defendants in the *Hardwick* litigation. As the County acknowledges,[24] the 1983 Judgment reflected the United States' agreement to restore the rancherias to their pre-termination status to the extent possible, without affecting any vested rights. *See* 1983HJ:¶¶6-9. But the 1983 Judgment expressly preserved for further proceedings, over which the district court retained jurisdiction, "any determination of whether or to what extent the boundaries of the rancherias . . . shall be restored." 1983HJ:¶5. The additional step toward restoration of the rancherias to pre-termination status, through

[24] Br.1 ("the Federal Stipulated Judgment . . . was a settlement purporting to 'restore' each of the 17 California Rancherias to their legal status as existed prior to enactment of the California Rancheria Act"); Br.10-11 ¶18 ("the Federal Stipulated Judgment . . . for federal government purposes—'restored' each of the 17 California Rancherias to their legal status that existed prior to enactment of the California Rancheria Termination Act").

restoration of the boundaries, was tailored to the specific factual circumstances of each rancheria in the subsequent judgments. The 1987 *Hardwick* Judgment did what the 1983 Judgment stated it should – it addressed the effects of the unlawful termination by restoring the boundaries of the Rancheria and securing the commitments of the parties to treat the Rancheria as "any other federally recognized Indian reservation." HJ:§2¶¶B(3), D.

Moreover, the provisions in the *Hardwick* Judgment closely track the relief sought by the Rancheria Plaintiffs in their Second Amended Complaint, which was broader than relief from County taxation.[25] The Second Amended Complaint repeatedly described the *effects* of the premature and unlawful termination as including the County's improper exercise of "civil regulatory jurisdiction," and not just the improper imposition of property taxes.[26] The Complaint sought (*inter alia*) a declaration that the county defendants lack authority to impose property taxes and to assert civil regulatory jurisdiction (such as zoning

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[25] The Complaint, although extrinsic evidence, is part of the "circumstances surrounding the formation" of the Judgment and may aid in interpretation. *Cf. Richardson*, 127 F.3d at 101.

[26] *See Hardwick* Dkt:173 at ¶¶31, 35, 39, 44, 49, 52, 55.

authority) because "such lands were and are still 'Indian Country.'" *Hardwick* Dkt:173 at 26-27. Plaintiffs also sought preliminary and permanent injunctive relief "restraining and enjoining the federal and county defendants . . . from failing to treat the subject Rancherias as Indian Reservations in all respects and to afford to the Indians thereof all rights, privileges and immunities ordinarily accorded to Indians and Indian tribes, bands, and communities." *Id.*

The district court correctly concluded that the *Hardwick* Judgment "unambiguously sets forth the parties' intent that the County would treat the Buena Vista Rancheria as a reservation," slip op. at 12-13, not just for tax purposes but for "'all federal laws that apply to Indians and Indian tribes.'" *Id.* at 14. A provision is not ambiguous merely because parties later disagree as to its meaning. *Segar*, 508 F.3d at 22. A provision "is ambiguous only if it is reasonably susceptible of different constructions." *Id.* (internal quotation marks omitted). The terms here are not reasonably susceptible to the County's construction, and it is implausible that the Tribe would have agreed to such a narrow resolution of its claims seeking to reverse the unlawful termination of its reservation.

B. The Extrinsic Evidence Does Not Support the County's Interpretation of the *Hardwick* Judgment.

The district court found the *Hardwick* Judgment unambiguously demonstrated the County's intent to treat the Rancheria as a reservation for all purposes, and therefore that consideration of extrinsic evidence was unwarranted (slip op. at 11). It nevertheless considered extrinsic evidence, at the County's urging. *Id*. at 14-15. To help resolve ambiguity, a court may consider extrinsic evidence, such as the background of negotiations and the parties' course of conduct under a contract. *See, e.g., Entergy*, 568 F.3d at 984.

On appeal, the County makes no effort to rebut the district court's analysis of the extrinsic evidence. Nor did the County provide the district court with any countervailing extrinsic evidence to support its claim that its agreement to "treat" the Rancheria as a reservation was limited to tax matters.[27] The district court did not clearly err in determining (slip op. at 14-15) that the extrinsic evidence, like the text, showed that the County intended to treat the Rancheria as a

[27] The inadmissible "new evidence" provided by the County addressed the status of the Rancheria as a reservation, not the scope of the parties' intent to be bound by the *Hardwick* Judgment.

reservation for all purposes, and that the parties intended the *Hardwick* Judgment to cover future agreements without limitation.

First, the "course of conduct" shows that, for more than three decades (*i.e.*, both before and after the 1987 *Hardwick* Judgment), the County has treated the Rancheria as a reservation. As the district court recognized (slip op. at 14), the County's answer to the operative Second Amended and Supplemental Complaint in *Hardwick* stated as an affirmative defense that "Defendants at least since 1970 [before which no official County records exist] have recognized the Buena Vista Rancheria as 'Indian Country.'" *Hardwick* Dkt:179 at ¶21. The Answer also stated that "Defendants have not assessed, levied, charged or collected any property taxes or assessments on any property known to the Amador defendants as the Buena Vista Rancheria since at least 1970, before which no official County records exist." *Id.*

Second, in addition to its longstanding recognition of the Rancheria as "Indian Country," the County has recognized the Rancheria as a reservation specifically in the context of IGRA. For example, the County did not object to the Secretary's approval of the original compact in 2000 (AR31), even though (contrary to the County's

assertion, Br.32) the Compact identified the Rancheria as the location for gaming. *See supra* at 19-20. Indeed, the County entered into the 2001 Intergovernmental Agreement with the Tribe regarding the 2000 Compact. *See supra* at 20. That Agreement repeatedly refers to the Rancheria as a reservation.[28] Thus, in 2001, the County not only treated the Rancheria as an Indian reservation, but did so specifically in the context of IGRA. Such past dealings and implementation-conduct under the *Hardwick* Judgment is strong evidence of the parties' intent. *See Entergy*, 568 F.3d at 984; *Cities of Campbell v. FERC*, 770 F.2d 1180, 1191 (D.C. Cir. 1985) ("evidence of past dealings" under contract's terms "is probative of the parties' intent as to the terms of a contract"); *Tymshare, Inc. v. Covell*, 727 F.2d 1145, 1150 (D.C. Cir.

[28] The Amador County Board of Supervisors voted unanimously to approve the 2001 Intergovernmental Agreement. *See* Dkt:77-1 at 2. In the Fourth Recital, the County and the Tribe agreed that "the Tribe intends to open a Class III gaming and entertainment facility on Indian lands *within the Reservation*." *Id.* at 3 (emphasis added). Similarly, Section 1.1 describes the purpose of the 2001 Intergovernmental Agreement as addressing "certain off-*reservation* impacts," and Section 1.2 describes the "Project" as "a class III gaming and entertainment facility . . . and other non-gaming ancillary facilities on approximately 30 acres located *inside the Tribe's Reservation*." *Id.* at 4 (emphasis added). The Agreement also specified that the County and Tribe would apply for grants established by the Tribal/State Gaming Compact. *Id.* at 12.

1984) ("historical interpretation given to a contract by the parties is strong evidence of its meaning").

In sum, the extrinsic evidence demonstrated that for many decades the County has treated the Rancheria as a reservation, including in actions specifically involving IGRA, consistent with a natural reading of the *Hardwick* Judgment's text. The district court properly concluded that the County is foreclosed from challenging the Rancheria's status as a reservation.

III. THE RANCHERIA IS AN "INDIAN RESERVATION" AS THAT TERM IS USED IN IGRA.

If the County is not foreclosed from challenging the status of the Rancheria, the sole question is whether the Rancheria qualifies as "Indian lands" under IGRA. Currently, the Rancheria is owned in fee by the Tribe, rather than held in trust by the United States. Thus the parties agree, and this Court has recognized, that the Rancheria can qualify as "Indian lands" under IGRA only if it is an "Indian reservation." *Amador Cty. II*, 640 F.3d at 383; *see also* Br. 27; 25 U.S.C. 2703(4)(A).

A. The Rancheria was a reservation prior to its termination under the Rancheria Act.

The County is correct (Br.27-28) that, for the Rancheria to qualify for gaming under IGRA, the Rancheria had to constitute a reservation before its termination in 1961 in order for the *Hardwick* Judgments to have "restored" its reservation status. But the County is incorrect that the Rancheria was not a reservation before its termination.

This Court previously expressed its understanding that, prior to termination, the Rancheria was a reservation. *See* 640 F.3d at 383 ("the California Rancheria Act stripped the land of its reservation status"). This Court has also recognized that another small California rancheria, established under circumstances similar to the Buena Vista Rancheria, was a reservation. *See City of Roseville II*, 348 F.3d at 1022 (in 1917, "the federal government provided the Auburn Tribe with a small 20-acre reservation," the Auburn Rancheria, which was terminated under the Rancheria Act). The County has offered no persuasive evidence or argument undercutting the Court's understanding in those prior rulings.

1. Congress and the Courts have consistently regarded all California rancherias purchased for Indians, pursuant to the 1906 Act and subsequent Appropriations Acts, as "reservations."

The County's attack (Br. 32-35) on the NIGC's 2005 Opinion (Dkt:11-4) lacks merit. As explained *supr*a at 9-10, the 1906 and 1908 Acts, which began the multi-year federal purchase and set-aside of the California rancherias, both used the term "reservation." 34 Stat. at 333; 35 Stat. at 76. Although subsequent Appropriations Acts did not use the word "reservation," they were merely extensions of the policy and process that began with the 1906 Act.[29] All of the Appropriations Acts should be read *in pari materia* and construed together. *See Branch v. Smith*, 538 U.S. 254, 281 (2003) (the meaning of earlier statutes can "shed[]light" on later statutes); *Griffith v. Lanier*, 521 F.3d 398, 402–03

[29] When, during debates over the Appropriations Acts in 1917 and 1920, lawmakers asked about the status of prior appropriations, the response was to report purchases beginning with the 1906 Act and including all subsequent related Appropriations Acts. *See* 54 Cong. Rec. 2025, 2059 (Jan. 26, 1917) (statement of Sen. Curtis); 59 Cong. Rec. 1206, 1228 (Jan. 8, 1920) (statement of Rep. Snyder).

(D.C. Cir. 2008).[30] Accordingly, all of the Appropriation Acts are properly understood as authorizing the establishment of "reservations."

Additionally, the "use and occupancy" language of the post-1908 Appropriations Acts is consistent with language used when establishing Indian reservations. Specifically, the Acts appropriate funds "[f]or the purchase of lands for the homeless Indians in California, including improvements thereon, for the *use and occupancy* of said Indians." *See, e.g.*, 38 Stat at 589 (emphasis added). For decades before Congress authorized funds for the purchase of rancherias, both it and the executive branch had used the phrase "use and occupancy" (or variations thereon) when describing lands set aside as Indian

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[30] The House debate over the 1914 Act demonstrates that the distinction between a "reservation" and land purchased for "homeless Indians" was merely semantic. Rep. John Hall Stephens explained that "[t]here were no public lands in the State of California which were available to be laid off as reservations either by the President or through treaties. . . . Therefore these Indians are called homeless Indians of California. If they are to have any land at all, it must be purchased for them by the United States Government." 51 Cong. Rec. 3550, 3577-78 (Feb. 17, 1914). There was no discussion whatsoever that these newly purchased lands would have any different legal status than the State's existing Indian reservations. In fact, during debate over a subsequent Appropriations Act containing identical language, Sen. Charles Curtis explained: "The Indians cannot sell the land which is now being purchased for them. It is held in trust by the Government." 56 Cong. Rec. 3938, 3959 (Mar. 23, 1918).

reservations. *See, e.g.*, Treaty between the United States and the Qui-nai-elt and Quil-leh-ute Indians, 12 Stat. 971 art. II (July 1, 1855) (describing reservation as lands "reserved for the use and occupancy of the tribes and bands aforesaid"); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 133-34 (1982) (Jicarilla Apache Tribe's reservation established by Executive Order in 1887, set aside public lands for the "use and occupation" of the Jicarilla Apache Indians). Supreme Court precedent establishes that the term "Indian reservation" generally encompasses any tract of land set aside formally or informally by the federal government for use or occupancy of Indians. *See, e.g., United States v. Celestine*, 215 U.S. 278, 285 (1909); *Minnesota v. Hitchcock*, 185 U.S. 373, 390 (1902).

The distinction the County seeks to draw among the Appropriations Acts[31] has never been made by Congress, Interior, or the

[31] The County suggests that NIGC was trying to obscure the meaning of the 1906 and 1908 Acts by the use of ellipsis in the statutory quotation. Br.33-34 (citing Dkt:11-4 at 2). But the ellipsis did not hide any substantive provision. The 1906 and 1908 Acts authorized: (1) the purchase of land, water, and water rights for Indians living on reservations without arable land; (2) the purchase of land, water, and water rights for Indians not living on reservations; and (3) the construction of irrigation works on any lands occupied by Indians. The *Cont…*

Courts. Congress made its understanding of the reservation-status of all of the California rancherias clear in the Rancheria Act, which treated all "rancherias" and "reservations" in the same manner. *See* Rancheria Act, 72 Stat. 619-621 at §§ 2, 3, 5, 6, 10, 11; and 1964 Amendment, 78 Stat. 390-91, at §§ a, b, g.[32]

As noted above (at 45), this Circuit already has recognized one California rancheria as a reservation. *See City of Roseville II*, 348 F.3d at 1022. We are not aware of any court holding differently as to other rancherias. *See, e.g., Big Lagoon Rancheria v. California*, 789 F.3d 947, 951 n.2 (9th Cir. 2015) (*en banc*); *Artichoke Joe's Cal. Grand Casino v. Norton*, 278 F. Supp. 2d 1174, 1176 n.1 (E.D. Cal. 2003) (describing rancherias as "small Indian reservations"); *Duncan v. United States*, 667 F.2d 36, 41 (Ct. Cl. 1981) (finding with respect to Robinson

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County (Br.34) incorrectly reads those statutes as mandates to furnish "comprehensive reservation facilities" and then uses this overblown interpretation to contrast the 1906 and 1908 Acts with subsequent Appropriations Acts.

[32] The Senate Report accompanying the Rancheria Act further demonstrated Congress's understanding that the land status of all rancherias and reservations was the same. S. Rep. 85-1874 at 4 (1958) (estimating "costs to terminate Federal trusteeship" on the 41 rancherias).

Rancheria that "Congress clearly contemplated that th[e] land have the same general status as reservation lands"), *cert. denied*, 463 U.S. 1228 (1983); *Governing Council of Pinoleville Indian Cmty. v. Mendocino Cty.*, 684 F. Supp. 1042, 1046 (N.D. Cal. 1988) (finding, against a similar backdrop of termination and restoration history, intent "to restore all land within the original Rancheria as Indian Country and . . . to treat the entire Rancheria as a reservation."). In sum, Congress and the courts have recognized the rancherias as reservations and never distinguished among them based on funding.

2. The label "reservation" is not a requisite for reservation status.

For over a century, the terms "reservation" and "rancheria" have been used interchangeably, in referring to Indian lands set aside in California. *See, e.g.*, William Wood, *The Trajectory of Indian Country in California: Rancherias, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies and Rancherias*, 44 Tulsa L. Rev. 317, 358-359 (2008). The County suggests (Br.42-44) that rancherias purchased with appropriations in 1914 (and subsequent years) could not have been reservations because Congress did not expressly designate the lands as

reservations or use the word "reservation" in the Appropriations Act. Such formalism is not required.

The Supreme Court settled long ago in connection with the Reno Indian Colony that formal designation as a "reservation" is not a requisite of reservation status:

> The fundamental consideration of both Congress and the Department of the Interior in establishing this colony has been the protection of a dependent people. Indians in this colony have been afforded the same protection by the government as that given Indians in other settlements known as "reservations." . . . [I]t is immaterial whether Congress designates a settlement as a "reservation" or "colony."

United States v. McGowan, 302 U.S. 535, 538-39 (1938). The Reno Indian Colony, like the Rancheria here, was a small tract of land (28 acres purchased pursuant to 1916 and 1926 appropriations) "to provide land for needy Indians scattered over the State of Nevada." *Id.*

Likewise, the Supreme Court has consistently held that no talismanic words are required to establish an Indian reservation. Instead, "[i]t is enough that from what has been done there results a certain defined tract appropriated to certain purposes." *Hitchcock*, 185 U.S. at 390. Thus, even absent any "reservation" label, trust land "qualifies as a reservation" where, as with the Buena Vista Rancheria,

it has been "'validly set apart for the use of the Indians as such, under the superintendence of the Government.'" *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991) (citation omitted); *see also United States v. John*, 437 U.S. 634, 649 (1978) (observing that "[t]here is no apparent reason why these [trust] lands, which had been purchased [by the United States] in previous years for the aid of those Indians, did not become a 'reservation,' at least for purposes of federal criminal jurisdiction, at that particular time"); *see also Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1292-94 (D.C. Cir. 2000) (EPA reasonably interprets "reservation" in Clean Air Act to include land that has "not been formally designated as a reservation").

All of the California rancherias established with funds from the Appropriations Acts, and purchased to address the dire circumstances of homeless Indians (*see supra* at 8-9), were held in trust by the United States.[33] Although the United States need not hold title for land to be

[33] The County's assertions (Br.27, 32) that the Rancheria has never been held in trust, and that this is an undisputed fact, are incorrect. The United States held title to the Rancheria from the date of its purchase until the unlawful termination pursuant to the Rancheria Act

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considered a reservation, the trust status of these lands further evidences that—despite being called "rancherias"—they were no different in the eyes of the law from any other Indian reservation.

3. The County's historical arguments are based on inadmissible evidence and immaterial "facts."

The historical record demonstrates that Congress purchased the Rancheria as a reservation, and that Interior understood the Rancheria to be a reservation for purposes of IRA elections, as documented in the

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in 1961, as this Court previously recognized. *See Amador Cty. II*, 640 F.3d at 375 ("the United States purchased 67.5 acres of land in the County and held it in trust for the Tribe's use"); *cf. supra* nn. 30, 32 (Congress understood land would be held in trust). Numerous sections of the Rancheria Act demonstrate that the rancherias, including the Buena Vista Rancheria, were held in trust by the United States and under federal superintendence. *See, e.g.*, §3(e), 72 Stat. 620 ("lands within the rancheria or reservation that are held by the United States for the use of Indians" may be exchanged for other lands by the Secretary "before the termination of the Federal trust"); §9, 72 Stat. 621 ("termination of the Federal trust relationship"); §10(b), *id.* (prior to termination, the United States held title to all rancheria lands in "trust" for the Indians of the rancherias or subject to a "restriction against alienation"); *Smith v. United States*, 515 F. Supp. 56, 61 (N.D. Cal. 1978) (The Rancheria Act evidences "Congressional intent to hold Rancheria lands in trust for the Indian people of the rancherias, as in fact was done, and to continue the lands in such trust status until all requirements for termination under the Act are met and the lands actually distributed . . . ."). Indeed, the 1958 Senate Report states, specifically with regard to the Buena Vista Rancheria, that "[BIA] services are rendered only in connection with trust status of the lands." S. Rep. 85-1874 at 17.

Haas Report (*see supra* at 12).[34] The County fails to address any of this judicially-noticeable historical evidence, and offers no admissible or material evidence to the contrary.

The County relies on the Beckham Materials which, as explained above (*supra* n.4), should be excluded from consideration. Even assuming they were admissible, the Beckham Materials actually disprove the County's claim (Br.30) that the Rancheria has never been "federally-documented as an Indian reservation."[35] The County's

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[34] In another case brought by the County, the court recognized that the absence of an IRA election supported the conclusion that a group of Indians must not have had a reservation "home base" in or around 1934 when IRA elections were conducted. *See Cty. of Amador v. U.S. Dep't of the Interior*, 136 F. Supp.3d 1193, 1209 (E.D. Cal. 2015), *appeal pending*, 9th Cir. No. 15-17253. The inverse must also be true—that the occurrence of such an election is evidence of the existence of a "reservation."

[35] The County's assertion (Br.12 ¶24) that none of the records Beckham reviewed identify the Rancheria as a "reservation" is contradicted by Beckham's own Report. The Report actually demonstrated that Interior continued to refer to the Rancheria as a "reservation" into the 1950s. Beckham wrote that "the most detailed information about the [R]ancheria" is a 1951 report to the Bureau of Indian Affairs ("BIA") by Hill and Broadhead. Dkt:76-3 at 3. Beckham then (quoting Hill and Broadhead) identified at least four instances where they refer to the Rancheria as a "reservation." *Id.* ("'reservation is occupied by two families'"; "'reservation is a narrow strip"; "'cattle were inside the reservation'"); *id.* at 4 (recommending "'no improvements be undertaken

Cont…

remaining arguments, concerning occupation of the Rancheria and any "tribal activities" thereon (Br.30-32) are immaterial to the determination of whether the Rancheria is an "Indian reservation" for purposes of IGRA. Moreover, the Haas Report (*supra* at 12) provides undisputed evidence that the population at the Rancheria included four adult tribal members at the time of the IRA vote in 1935. The 1958 Senate Report states that "[t]here were 20 people on the rancheria when it was purchased in 1926" and there were "2 families, composed of 6 people" in 1958. S. Rep. 85-1874 at 17. No information regarding residency dissuaded Interior (in 1935) or Congress (in 1958) from concluding that the Rancheria was a reservation.

B. The *Hardwick* Judgments Restored the Rancheria to its Pre-Termination Reservation-Status.

The County's argument that the court in *Hardwick* could not "create reservation status through judicial decree," Br.28-29, is wholly misplaced. Nobody has argued that the *Hardwick* Judgments *created* a reservation. Rather, Interior argued, and the district court held, that

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on the reservation'"). *See also id.* at 4, 9 (discussing "'mineral rights of the reservation'" (quoting 1955 BIA Work Sheet)).

the *Hardwick* Judgments *restored* the Rancheria to the status it held prior to the Rancheria Act.

The County, in its untimely, collateral attack on the validity of the *Hardwick* Judgment, argues that *it* lacked authority to restore the boundaries of the reservation, declare the Rancheria as "Indian Country," or "alter the federal status of the property." Br.28-29, 35. The County is correct (Br.28-29) that it could not unilaterally restore the boundaries of the Rancheria.[36] But the United States *did* have the authority to do so, including by authorizing the determination of specific boundaries in the County judgments. And the *Hardwick* court, sitting in equity, had the authority to order the United States to take measures necessary to restore the Plaintiffs and rancherias to their status before the unlawful termination under the Rancheria Act. Both the United States and the Tribes have interpreted the *Hardwick* Judgments together to require the United States to effectuate those

[36] The County did have authority to: (1) agree that the Rancheria and Plaintiffs "were never lawfully terminated under the California Rancheria Act" (HJ:§2¶B(2)); (2) agree to treat the Rancheria as an Indian Reservation (HJ:§2¶D); (3) resolve tax matters (HJ:§2¶¶E-G); and (4) resolve matters concerning County roads (HJ:§2¶H).

provisions, and the courts have (without exception) similarly interpreted the *Hardwick* Judgments.

In the 1983 Judgment, the United States restored to their pre-termination status the Plaintiff Indians and Tribes associated with 17 rancherias. Regarding the *rancheria lands*, the United States agreed that the *Hardwick* Court would "retain jurisdiction to resolve . . . in further proceedings" "any determination of whether or to what extent the boundaries" of the 17 rancherias "shall be restored." 1983HJ:¶5. Those "further proceedings" were the settlements between the *Hardwick* plaintiffs and the corresponding defendant counties, such as Amador County. Although the 1983 *Hardwick* Judgment constituted a "final settlement of all claims" against the United States,[37] the United States remained a party to the litigation through the further proceedings on boundary restoration. *See, e.g.*, *Hardwick* Dkt:95, 101, 138, 174, 191, 228, 264, 268, 270, 346.

The United States did not sign the 1987 Stipulation for Entry of Judgment, which (*inter alia*) restored the reservation boundaries of the Buena Vista Rancheria. But the United States, as a party to the

[37] 1983HJ:¶13.

litigation, has always considered itself bound by the terms of the County Judgments.[38] Had the United States objected to terms in the 1987 *Hardwick* Judgment with this Tribe and Amador County, or in any of the other County judgments, it could have filed its objections with the court or (depending upon the procedural context) filed a Rule 59 motion to alter or amend judgment, a Rule 60 motion for relief from a judgment, or an appeal. The United States has never done so or expressed any objection to the 1987 *Hardwick* Judgment.

C. The County misconstrues and misapplies IGRA.

1. *The Rancheria was a reservation before IGRA was enacted, so IGRA Section 2719 does not apply.*

The County correctly explains (Br.25) that gaming under IGRA can only be conducted on "Indian lands," which includes "all lands within the limits of any Indian reservation." 25 U.S.C. 2703(4). The County (Br.25-27), however, appears to argue that, to qualify for gaming, the Rancheria must also satisfy the requirements of 25 U.S.C.

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[38] *See, e.g.*, Dkt:11-4 at 5 n.4; NIGC, *Determination on California Land Purchased by the Picayune Tribe in 1996* (Mar. 2, 2000) and NIGC, *Status of the Picayune Rancheria Lands* (Dec. 3, 2001), both *available at* http://www.nigc.gov/general-counsel/indian-lands-opinions (last visited April 3, 2017).

2719(a). The County's reliance on Section 2719 is misplaced. That section prohibits gaming on certain "lands acquired by the Secretary in trust for the benefit of an Indian tribe *after* October 17, 1988." *Id.* (emphasis added). No such lands are at issue here.

The County further argues (Br.40-41) that the sole method by which the Secretary may establish a reservation is through a formal declaration of reservation status under IRA Section 7 (25 U.S.C. 5110). The County bases its position on a regulation implementing IGRA Section 2719—25 C.F.R. 292.6(c)—which is inapposite. That regulation applies where land that is not within the boundaries of a reservation is taken into trust after October 17, 1988, to establish an "initial reservation," under Section 2719(b)(1)(B)(ii). Here, the Rancheria is eligible for gaming because it was established as a reservation in 1927 pursuant to the Appropriations Acts, Interior confirmed its reservation status in 1935 by holding an election under the IRA, and then further confirmed its reservation status by terminating it pursuant to the Rancheria Act. The *Hardwick* Judgments restored that status. No formal declaration under IRA Section 7 was required.

2. Lands within the boundaries of an Indian reservation need not be held in trust by the United States to be "Indian lands" under IGRA.

Contrary to the County's assertion (Br.36-37), Section 2719 does not require reservation land to be held in trust by the United States in order for the land to be eligible for gaming. By its plain terms, IGRA applies to "all lands within the limits of any Indian reservation." 25 U.S.C. 2703(4)(A); *see also Solem v. Bartlett*, 465 U.S. 463, 470 (1984) (reservation may exist notwithstanding fee lands within its boundaries); *Indian Country, U.S.A. v. Oklahoma*, 829 F.2d 967, 975-76 (10th Cir. 1987) (noting fee title is "not an obstacle to . . . reservation . . . status").

3. Interior's regulation implementing IGRA reasonably defines "reservation" to include rancherias restored by judicial action.

The County does not address Interior's regulatory interpretation of the term "reservation" under IGRA. In 2008, Interior promulgated regulations governing the eligibility of lands acquired after enactment of IGRA for gaming. Those regulations provided, *inter alia*, that "[r]eservation means: . . . (2) Land of Indian colonies and rancherias (including rancherias *restored by judicial action*) set aside by the United

States for the permanent settlement of the Indians as its homeland." 25 C.F.R. 292.2 (emphasis added).[39]

The district court (slip op. at 16-17) looked to this regulation to confirm its finding (based on the Congressional Clarification and the historical evidence) that Interior has not acted unlawfully in authorizing gaming on the Rancheria based on its status as a reservation. The County's argument—that rancherias purchased with funds after 1908 are not reservations—would render Interior's regulation invalid as overinclusive. Such a result is unwarranted and demonstrably inconsistent with congressional intent and court precedent.

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[39] Although Section 2719 does not itself apply to the Rancheria, the meaning of "reservation" adopted for purposes of Section 2719 necessarily applies here. Under various subparts of Section 2719, Interior must determine "the boundaries of the reservation of the Indian tribe on October 17, 1988" and whether an "Indian tribe has no reservation." 25 U.S.C. 2719(a)(1), (2). That is the question here: did the Tribe have a reservation on October 17, 1988, or did it have no reservation? There would be no plausible reason to conclude that land that is a "reservation" for purposes of Section 2719 would have a different status for purposes of Section 2703(4).

As to the County's arguments (Br.36-37)[40] that the district court "overstated the impact" of Public Law 107-63 (the Congressional Clarification), the County is correct that IGRA specifies the lands on which gaming may be conducted; and that Public Law 107-03 does not allow the Secretary to arbitrarily "'treat' land as qualified for gaming" (Br.37). What the County fails to recognize is that, in clarifying that the Secretary (not the NIGC) had the authority to determine whether a specific parcel of land is a reservation, Congress acknowledged that *it* had not defined the term "reservation." If, as the County argues (Br.40-41), Congress had intended "reservation" to mean only formally proclaimed reservations, there would have been no reason to delegate to the Secretary authority to make such a determination.

In sum, the County has utterly failed to demonstrate that Interior's interpretation of the term "reservation" is arbitrary and capricious, a matter that must be evaluated "mindful of the 'governing canon of construction requir[ing] that statutes are to be construed

[40] The County's reference (Br.37 n.2) to Section 123 of Public Law 106-291, which concerns a Huron Cemetery in Kansas, has no relevance to the land at issue here.

liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.'" *Grand Ronde*, 830 F.3d at 558.

CONCLUSION

For the foregoing reasons, the district court's decision granting Interior's cross-motion for summary judgment should be affirmed.

Respectfully submitted,

JEFFREY H. WOOD
Acting Assistant Attorney General

MARY GABRIELLE SPRAGUE
JUDITH RABINOWITZ
KATHERINE W. HAZARD
/s/ Katherine W. Hazard
U.S. Department of Justice
Environment & Natural Resources
Division, Appellate Section
P.O. Box 23795 L'Enfant Plaza Station
Washington, DC 20026
(202) 514-2110
Katherine.Hazard@usdoj.gov

Of Counsel:
DANIEL LEWERENZ
Office of the Solicitor
U.S. Department of the Interior
Washington, DC

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CERTIFICATE OF COMPLIANCE
WITH TYPE VOLUME LIMITATION

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 12,932 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32(a)(2).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using WordPerfect X3 in 14-point Century Schoolbook font.

/s/ Katherine W. Hazard
KATHERINE W. HAZARD
U.S. Department of Justice
Environment & Natural Res. Div.
P.O. Box 23795 (L'Enfant Station)
Washington, DC 20026
(202) 514-2110
Katherine.Hazard@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2017, I electronically filed the foregoing Answering Brief of the Appellees with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, which will send notice of such filing to all listed counsel of record.

/s/ Katherine W. Hazard
KATHERINE W. HAZARD
U.S. Department of Justice
Environment & Natural Resources
Division, Appellate Section
P.O. Box 23795 (L'Enfant Station)
Washington, DC 20026
(202) 514-2110
Katherine.Hazard@usdoj.gov

ADDENDUM TO APPELLEES' BRIEF

Table of Contents

DAVID J. RAPPORT
LESTER J. MARSTON
California Indian Legal Services
200 West Henry Street
Post Office Box 488
Ukiah, California 95482
Telephone: (707) 462-3825

Attorneys for Plaintiffs

JOSEPH P. RUSSONIELLO
United States Attorney
RODNEY H. HAMBLIN
Assistant United States Attorney
PAUL E. LOCKE
Assistant United States Attorney
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 556-5134

Attorneys for Federal Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TILLIE HARDWICK, et al., Plaintiffs v. UNITED STATES OF AMERICA, et al., Defendants.	No. C-79-1710-SW STIPULATION FOR ENTRY OF JUDGMENT

The parties to the above-entitled action, recognizing the uncertainties in law and the burden of further litigation, and in order to make mutually beneficial settlement of these actions, subject to approval of the Court pursuant to Federal Rules of Civil Procedure, Rule 23(c), stipulate that the Court may enter judgment as follows:

/ / / / / / / /

1. That the seventeen Rancherias which are the subject of the provisions of paragraphs 2 through 13 inclusive, of this stipulation, are as follows:

Big Valley

Blue Lake

Buena Vista

Chicken Ranch

Cloverdale

Elk Valley

Greenville

Mooretown

North Fork

Picayune

Pinoleville

Potter Valley

Quartz Valley

Redding

Redwood Valley

Rohnerville

Smith River

These rancherias are more fully described in the attached Exhibit "A", which is incorporated herein by reference as though set forth in full.

2. The Court shall certify a class consisting of all those persons who received any of the assets of the rancherias listed and described in paragraph 1 pursuant to the California

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Rancheria Act 1/ and any Indian heirs, legatees or successors in interest of such persons with respect to any real property they received as a result of the implementation of the California Rancheria Act.

3. The status of the named individual plaintiffs and other class members of the seventeen rancherias named and described in paragraph 1 as Indians under the laws of the United States shall be restored and confirmed. In restoring and confirming their status as Indians, said class members shall be relieved from the application of Sections 2(d) and 10(b) of the California Rancheria Act and shall be deemed entitled to any of the benefits or services provided or performed by the United States for Indians because of their status as Indians, if otherwise qualified under applicable laws and regulations.

4. The Secretary of the Interior shall recognize the Indian Tribes, Bands, Communities or groups of the seventeen rancherias listed in paragraph 1 as Indian entities with the same status as they possessed prior to distribution of the assets of these Rancherias under the California Rancheria Act, and said Tribes, Bands, Communities and groups shall be included on the Bureau of Indian Affairs' Federal Register list of recognized tribal entities pursuant to 25 CFR, Section 83.6(b). Said Tribes, Bands, Communities or groups of Indians shall be relieved from the application of section 11 of the California Rancheria Act and shall be deemed entitled to any of the benefits or services provided or performed by the United States for Indian Tribes,

1/ Act of August 18, 1958, P.L. 85-671, 72 Stat. 69, as amended by the Act of August 11, 1964, 78 Stat. 390.

Bands, Communities or groups because of their status as Indian Tribes, Bands, Communities or groups.

5. The Court shall not include in any judgment entered pursuant to this stipulation any determination of whether or to what extent the boundaries of the rancherias listed and described in paragraph 1 shall be restored and shall retain jurisdiction to resolve this issue in further proceedings herein.

6. Any named individual plaintiff or class member who received or presently owns fee title to an interest in any former trust allotment by reason of the distribution of the assets of any of the Rancherias listed in paragraph 1 shall be entitled to elect to restore any such interest to trust status, to be held by the United States for the benefit of such Indian person(s).

7. Within two years of date of notice of this judgment, as provided in paragraph 9, the Indian Tribes, Bands, Communities or groups of the seventeen rancherias listed in paragraph 1 that are recognized by the Secretary of the Interior pursuant to paragraph 4 herein may arrange to convey to the United States all community-owned lands within their respective rancherias to which the United States issued fee title in connection with or as the result of the distribution of the assets of said rancherias, to be held in trust by the United States for the benefit of said Tribes, Bands, Communities or groups, authority for the acceptance of said conveyances being vested in the Secretary of Interior under section 5 of the Act of June 18, 1934, "The Indian Reorganization Act," 48 Stat. 985, 25 U.S.C. §465 as amended by section 203 of the

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Indian Land Consolidation Act. Pub. L. 97-459, Title II, 96 Stat. 2515 and/or the equitable powers of this court.

8. Any named plaintiff or other class member herein may elect to convey to the United States any land for which the United States issued fee title in connection with or as the result of the distribution of assets of said rancherias to be held in trust for his/her individual benefit or the benefit of any other member or members of the rancheria, authority for the acceptance of said conveyances being vested in the Secretary of the Interior under section 5 of the Act of June 18, 1934, "The Indian Reorganization Act," 48 Stat. 985, 25 U.S.C. §465 as amended by section 203 of the Indian Land Consolidation Act, Pub. L. 97-459, Title II, 96 Stat. 1512 and/or the equitable powers of this court.

9. Upon entry of judgment herein the United States shall give personal mail notice to each individual plaintiff and other class members (to the extent such persons can be identified and located through the exercise of reasonable efforts) that said individuals may elect to return their lands to trust pursuant to the judgment entered pursuant to this stipulation. Said notice shall advise that the Bureau of Indian Affairs will assist those individuals desiring to convey lands to the United States, including providing for forms and instructions. In addition, the United States shall aid and assist class members in perfecting said conveyances by obtaining any necessary policies of title insurance or taking any other actions administratively required to complete such conveyances. Nothing in this Stipulation shall require the United States to provide funds for the payment of real property taxes which may have

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accrued in the past or may accrue in the future with respect to lands located on any Rancheria as described in Exhibit A; provided, however, that this Stipulation does not represent a concession by any party hereto that any of said property is subject to real property taxes.

The United States shall also give general notice of the rights provided by this paragraph 9 by publishing notice once each week for one month in newspapers of general circulation most likely to be read by class members, and by posting notice in a conspicuous location on or near each of the seventeen rancherias named in paragraph 1.

10. The Secretary of the Interior, named individual plaintiffs, and other class members agree that the distribution plans for these Rancherias shall be of no further force and effect and shall not be further implemented; however, this provision shall not affect any vested rights created thereunder.

11. All claims whatsoever for money damages against the United States resulting from the distribution of the assets of the seventeen rancherias named in paragraph 1 under the Rancheria Act and arising out of the implementation of said Act shall be dismissed with prejudice, plaintiffs having specifically considered the potential value of said claims, the probability of the success thereof, and the value of the relief to be obtained under this settlement agreement.

12. For the purpose of resolving any disputes which arise among the parties in the course of implementing the judgment to be entered pursuant to this stipulation, or for extending the time

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within which any act may or must be performed under this Stipulation, the Court shall retain jurisdiction over this matter for a period of two(2) years from entry of judgment, or for such longer time as may be shown to be necessary on a duly-noticed motion by any party.

13. Entry of judgment pursuant to this stipulation shall constitute a final settlement of all claims which named plaintiffs and plaintiff class members have or may have against the United States and its officers and employees arising out of the implementation of the California Rancheria Act at the seventeen Rancherias listed in paragraph 1.

14. Except as hereafter specifically provided in paragraphs 15-19, the claims asserted in this action by or on behalf of any persons who received any of the assets of the Graton, Scotts Valley, Guideville, Strawberry Valley, Cache Creek, Paskenta, Ruffeys, Mark West, Wilton, El Dorado, Chico or Mission Creek Rancherias are dismissed without prejudice to their being refiled in another action and defendants shall not assert any laches defense to any such subsequent action they could not have asserted prior to the date this action was filed.

15. The claims of Ethel Whiterock, Minerva Pike, Jesse Elliott, Nora Cooper and Irene Young who received assets from the termination of the Guideville Rancheria under the California Rancheria Act shall be dismissed on grounds of res judicata based on the stipulation and judgment entered in Whiterock et al. v. Udall, Fed. Dist. Ct. N.D. Cal. No. 50584 SAW.

16. The claims of all the named and unnamed class members represented in Taylor et al. v. Hickel, C-70-719 SAW (N.D. Cal.)

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from the Auburn Rancheria shall be dismissed on grounds of res judicata.

17. The claims asserted in this action against the United States on behalf of Frank Truvido and Gloria Truvido of Graton Rancheria who were parties to Frank Truvido and Gloria Truvido v. Morton, C-72-181 GBH (N.D. Cal.), shall be dismissed on grounds of res judicata.

18. The claims asserted in this action on behalf of Teresa Boggs of the Scotts Valley Rancheria who was a party to Teresa Boggs and Bessie Ray v. Rogers C.B. Morton, C-71-1714 RFP (N.D. Cal.), shall be dismissed on the grounds of res judicata.

19. The claims asserted in this action by any person who received any of the assets of the Robinson or Table Bluff Rancherias pursuant to the California Rancheria Act shall be dismissed from this action since prior to filing of this action those persons had filed independent actions in Duncan et al., v. Andrus, Fed. Dist. Ct., N.D. Cal. No's C-71-1572 WWS, C-71-1713 WWS and Duncan et al., v. U.S., (Ct. Cls.) No 19-75 and Table Bluff-Band et al., v. Andrus, No. C-75-2525 WWS, which actions are still pending.

Dated: July 19, 1983

CALIFORNIA INDIAN LEGAL SERVICES

By: David Rapport
DAVID J. RAPPORT
Attorneys for Plaintiffs

Dated: July 15, 1983

JOSEPH P. RUSSONIELLO
United States Attorney

By: Paul E. Locke
PAUL E. LOCKE
Assistant United States Attorney
Attorneys for Federal Defendants

m CBD-183
8-76 DOJ

pt 32-3

EXHIBIT

RANCHERIA DESCRIPTIONS

BIG VALLEY

The Big Valley Rancheria, 118.45 acres, is located on the south shore of Clear Lake near Finley in Lake County, California.

Tract 1: SE1/4NW1/4, NE1/4SW1/4 and Lot 3 (being the fractional NE1/4NW1/4), Section 32, T. 14 N., R. 9 W., Mount Diablo Meridian, California.

Tract 2: That portion of the SE1/4SW1/4 Section 29 and NE1/4NW1/4 Section 32, T. 14 N., R. 9 W., Mount Diablo Meridian, which is north of the United States Meander Line for Clear Lake and which is above the low water line of Clear Lake, subject to a flowage easement.

BLUE LAKE

The Blue Lake Rancheria, 30.92 acres, is located adjacent to the city of Blue Lake, Humboldt County, California.

A tract of land situate in a portion of the SE1/4SW1/4 Section 19 and in a portion of the NE1/4NW1/4 Section 30, T. 6 N., R. 2 E., Humboldt Meridian and more particularly described in a Warranty Deed recorded in Volume 107 of Deeds, page 224 in the records of Humboldt County, California.

BUENA VISTA

The Buena Vista Rancheria, 67.5 acres, is located in Amador County, California.

Commencing at the NE corner of Section 19, T. 5 N., R. 10 E., Mount Diablo Meridian, California, thence running west along section line 578 feet, thence at right angles south 5280 feet, thence at right angles east 578 feet, thence at right angles north 5280 feet to place of beginning.

CHICKEN RANCH

The Chicken Ranch Rancheria, 40 acres, is located in Tuolumne County, California.

E1/2E1/2NE1/4 Section 20, T. 1 N., R. 14 E., Mount Diablo Meridian, California.

32-3
EXHIBIT A

CLOVERDALE

The Cloverdale Rancheria, 27.50 acres, is located adjacent to and south of the town of Cloverdale, Sonoma County, California.

All these certain lots, pieces or parcels of land, situate, lying and being in the Township of Cloverdale, County of Sonoma, State of California, and bounded and particularly described as follows, to wit: Beginning at a point in the center of the main public road leading from Cloverdale to Healdsburg and at the northwesterly corner of the land formerly owned by Louis Bee, which is an iron pipe two (2) inches in diameter, two (2) feet long, driven below the surface of the ground, from which a fir tree five (5) feet in diameter marked "R.M.", and known as station 8 on the Muscalacon Grant Line bears south 47 W., 39.38 chains distant; thence N. 47 40' E., along the northerly line of the land formerly owned by Louis Bee, 49.25 chains; thence north 59 15' W., 6.071/2 chains to the southerly line of the land of Helena M. Woolsey, thence S. 47 28' W., along the southerly line of the land of Helena M. Woolsey, 46.68 chains to the center line of the hereinbefore mentioned public road; thence S. 34 15' E., along the center line of said road 5.71 chains to the place of beginning, containing 27.50 acres. (Note - above area included Northwestern Pacific Railroad right of way.)

ELK VALLEY

The Elk Valley Rancheria, 100 acres, is located near the town of Crescent City, Del Norte County, California.

SE1/4SE1/4, S1/2S1/2NE1/4SE1/4 Section 22; SW1/4SW1/4, S1/2S1/2NW1/4SW1/4 Section 23, T. 16 N., R. 1 W., Humboldt Meridian, California.

GREENVILLE

The Greenville Rancheria, 275 acres, is located approximately three miles east of Greenville, Plumas County, California.

Parcel 1: N1/2 Lot 4, Section 5; N1/2 Lot 1, Section 6, T. 26 N., R. 10 E., Mount Diablo Meridian, California.

Parcel 1A: SE1/4 Section 31, T. 17 N., R. 10 E., Mount Diablo Meridian, California.

Parcel 2: Beginning at the S.E. corner of Plumas County Swamp and Overflowed Land Survey No. 37, N. 31 1/4 E., 3.72 chains from the 1/4 Section corner on the South line of Section 6, T. 26 N., R. 10 E., M.D.M., and running thence N.

32-3
EXHIBIT A

72 1/2 W., 15.80 chains; thence N. 4 E., 42.00 chains, thence E. 2.06 chains, thence N. 14.03 chains; thence E. 7.97 chains to the North and South centerline of said Section 6; thence S. 23.85 chains to the center of said Section 6; thence E. 5.00 chains; thence S. 4 1/2 W., 36.88 chains to the place of beginning, containing 75 acres.

MOORETOWN

The Mooretown Rancheria, 160 acres, is comprised of two parcels, one-half mile apart. It is located in Butte County, California.

Parcel 1: N1/2NE1/4 Section 22 T. 20 N., R. 6 E., Mount Diablo Meridian, California.

Parcel 2: N/1/2NE1/4 Section 23, T. 20 N., R. 6 E., Mount Diablo Meridian, California.

NORTH FORK

The North Fork Rancheria, 80 acres, is located about two miles from the town of North Fork, Madera County, California.

SE1/4NE1/4 Section 20, and SW1/4NW1/4 Section 21, T. 8 S., R. 23 E., Mount Diablo Meridian.

PICAYUNE

The Picayune Rancheria, 80 acres, is located three miles south of Coarsegold in Madera County, California.

N1/2NE1/4 Section 29, T. 8 S., R. 21 E., Mount Diablo, Meridian.

PINOLEVILLE

The Pinoleville Rancheria, 99.53 acres, is located in Mendocino County, California.

Tract 1: A portion of Lot 142 of Healey's Survey and Map of the Yokayo Rancho containing 3 acres and more particularly described in deed filed in Book 123 of Deeds, page 148, Recorder's Office, County of Mendocino.

Tract 2: A portion of Lots 141 and 142 of the Yokayo Rancho containing 96.53 acres and more particularly described in deed filed in Book 133 of Deeds, page 283, Recorder's Office, County of Mendocino.

31

POTTER VALLEY

The Potter Valley Rancheria, 96 acres, is located near the town of Potter Valley, Mendocino County, California.

Tract 1: A metes and bounds description in Section 19, T. 17 N., R. 11 W., Mount Diablo Meridian and more particularly described in Deed recorded in Book 116 of Deeds, Page 197, Mendocino County, containing 16 acres.

Tract 2: NW1/4SE1/4, SE1/4NW1/4 Section 35, T. 18 N., R. 12 W., Mount Diablo Meridian, containing 80 acres.

QUARTZ VALLEY

The Quartz Valley Indian Reservation, 604 acres, is located in Siskiyou County, California.

Tract 1: NW1/4, W1/2SW1/4 Section 2, T. 43 N., R. 10 W., E1/2SE1/4 Section 3 and a fractional portion of the NE1/4NE1/4 Section 3, T. 43 N., R. 10 W., Mount Diablo Meridian, containing 364 acres.

Tract 2: E1/2SE1/4 Section 34 and SW1/4 Section 35, T. 44 N., R. 10 W., Mount Diablo Meridian, containing 240 acres.

REDDING

The Redding Rancheria, 30.89 acres, is located south of Redding in Shasta County, California.

Tract No. 8 of the Anderson Valley Farms, situate, lying and being on the Rancho Buena Ventura or Reading Grant, in the County of Shasta, State of California.

REDWOOD VALLEY

The Redwood Valley Rancheria, 80 acres, is located north of the town of Redwood Valley, Mendocino County, California.

NE1/4SW1/4, fractional part of SE1/4NW1/4 Section 32, T. 17 N., R. 12 W., Mount Diablo Meridian and fractional part of Lot 131 of Healey's Survey and Map of Yokayo Rancho.

ROHNERVILLE

The Rohnerville Rancheria, 15.22 acres, is located near Fortuna, Humboldt County, California, and overlooks the village of Ronherville.

IE

Tract 1: A parcel of land situate in the E1/2SE1/4 Section 1, T. 2 N., R. 1 W., Humboldt Meridian containing 15 acres and more particularly described in a deed recorded in Volume 116 of Deeds, page 93 in the records of Humboldt County, California.

Tract 2: Commencing at the NW corner of the above tract and running thence N. 37 20' W. 215.5 feet; thence S. 10.6 feet; thence W. 40 feet; thence N. 60 feet; thence E. 40 feet; thence S. 37 20' E. 277 feet; thence S. 89 W. 37.5 feet to place of beginning, containing 0.22 acres, together with a spring.

SMITH RIVER

The Smith River Rancheria, 163.96 acres, and an unsurveyed island known as Prince Island, 14.25 acres, are located in Del Norte County, California.

Tract 1: Frac. W1/2, N1/2NW1/4NE1/4, NE1/4NE1/4 Section 17, T. 18 N., R. 1 W., Humboldt Meridian, California, containing 163.96 acres.

Tract 2: Unsurveyed island in the Pacific Ocean about 3/4 mile north of Smith River in Section 17, T. 18 N., R. 1 W., Humboldt Meridian, designated on the official plat of survey as Hunters Rock and on the U.S.C. & G. Chart No. 5900 as Prince Island, 14.25 acres.

DAVID J. RAPPORT
CALIFORNIA INDIAN LEGAL SERVICES
P.O. Box 488
Ukiah, California 95482
Telephone: (707) 462-3825

Attorneys for Plaintiffs

MARY ANN MCNITT
Amador County Counsel
108 Court Street
Jackson, California 95642
Telephone: (209) 223-6366

Attorneys for Amador County Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TILLIE HARDWICK, et al. Plaintiffs, vs. UNITED STATES OF AMERICA, et al. Defendants.	NO. C-79-1710 SW STIPULATION FOR ENTRY OF JUDGMENT (AMADOR COUNTY)

Plaintiffs on their own behalf and on behalf of class members from the Buena Vista Rancheria (hereafter, "plaintiff Rancheria") and defendants Elmer G. Evans, the Tax Collector for Amador County, Raymond Olivarria, the Assessor for Amador County, and the Board of Supervisors of Amador County, subject to approval of the Court agree as follows:

1. DEFINITIONS - The following definitions shall govern the construction of the stipulation.

A. "PLAINTIFFS" - means all Plaintiffs in the

above-captioned case, the plaintiff Rancheria, and all those class members from the plaintiff Rancheria.

B. "DEFENDANTS" - means Elmer G. Evans/Tax Collector for Amador County, Raymond Oliverria/Assessor for Amador County and the Board of Supervisors of Amador County, and their successors in office.

C. "PLAINTIFF RANCHERIA" - means all lands within the exterior boundaries of the Buena Vista Rancheria as described in paragraph 2B.1.)

D. "RANCHERIA PARCELS" - means all parcels of real property within the boundaries of the plaintiff Rancheria which were distributed or sold by the United States of America pursuant to the Plan for the Distribution of the Assets of the Plaintiff Rancheria, approved by the Secretary of the Interior, under the authority of the California Rancheria Act.

E. "INDIAN PARCELS" - means all those parcels of real property or interests in said parcels within the boundaries of the Plaintiff Rancheria currently owned by Indians entitled to return said parcels or interests thereof to the United States of America in accordance with the Judgment of the United States District Court, Northern District of California, in the above-entitled case.

F. "THE PARTIES" - means the Plaintiffs and Defendants as defined above.

G. "INDIAN COUNTRY" - means "Indian Country" as defined by 18 USC §1151.

H. "ELECTION TO RETURN TO TRUST STATUS" - means the filing of a deed in the Amador County Recorder's Office which has

been duly accepted by the United States of America which returns Indian Parcels to trust status with the United States of America.

I. "INDIANS" - means any Indian who owns any interest in a plaintiff Rancheria parcel.

J. "COUNTY MAINTAINED ROAD" - means those roads which are listed as part of the Amador County maintained road system, including roadside easements, located on the plaintiff Rancheria that were conveyed to Amador County as part of the termination of the Rancheria, if any.

K. "UNPAID PROPERTY TAXES" - means real property taxes due on Indian parcels.

L. "ASSESSMENT" - means an exaction of money imposed on the owner of real property located within the county the payment of which is secured by a lien on the property, including, but not limited to, benefit assessments, assessments imposed under the authority of the Improvement Acts of 1911 and 1913 and the Special Assessment, Investigation, Limitation and Majority Protest Act of 1931, the Revenue Bond Law of 1941, or any similar law.

2. The Parties, subject to approval of the Court pursuant to Federal Rules of Civil Procedure 23(c), stipulate that the Court may enter judgment as follows:

A. The Court shall certify a sub-class consisting of those members of the class previously certified herein from the plaintiff Rancheria in Amador County.

B. The Court shall declare that:

1) The Buena Vista Rancheria is described as shown on Exhibit A to the Stipulation for Entry of Judgment, filed herein

on August 2, 1983, and made the judgment of this Court on December 22, 1983, in Order Approving Entry of Final Judgment in action.

2) The plaintiff Rancheria and the Plaintiffs were never and are not now lawfully terminated under the California Rancheria Act ("Rancheria Act"), of August 18, 1958, Pub. L. 85-671, 72 Stat. 69, as amended by the Act of August 11, 1964, 78 Stat. 390; in that the requirements of section 3 of that Act were not fulfilled prior to the conveyance of the deeds to the Rancheria Parcels.

3) As a consequence this Court has authority as a court of equity to remedy the effects of the premature and unlawful termination of the plaintiff Rancheria and the Plaintiffs to the extent that it can do so without adversely affecting the interests of third party purchasers for value of Rancheria parcels.

C. The original boundaries of the plaintiff Rancheria, as described in paragraph 2B.1) above are hereby restored, and all land within these restored boundaries of the plaintiff Rancheria is declared to be "Indian Country".

D. The plaintiff Rancheria shall be treated by the County of Amador and the United States of America, as any other federally recognized Indian Reservation, and all of the laws of the United States that pertain to federally recognized Indian Tribes and Indians shall apply to the Plaintiff Rancheria and the Plaintiffs.

E. All real property taxes heretofore paid to the County of Amador by Plaintiffs for the tax year 1979 and any

subsequent tax year for Indian parcels shall be refunded in full to Plaintiff or the estate of the Plaintiff, if the plaintiff makes an election to return said parcel to trust status no later than December 31, 1988. Within ninety (90) days after the deed for said parcel is recorded in the county recorder's office, defendants shall mail to the plaintiff a claim form showing the total refund and the amount to be refunded for each tax year. The defendants shall refund the total amount shown on the form within thirty (30) days after the defendants receive a claim form signed by the plaintiff claiming a tax refund. No prejudgment interest shall be added to the amounts refunded under this paragraph. Defendants shall be entitled to keep all real property taxes collected on all property located on the plaintiff Rancheria except as specifically set forth above.

F. Defendants shall not collect or recover any Unpaid Property Taxes, assessments or fees on Indian Parcels within the boundaries of the Plaintiff Rancheria as restored; any liens to secure the payment of such assessments, fees or taxes shall be cancelled; and, except as provided in Paragraphs G, defendants shall not have jurisdiction to tax or assess Indian Parcels on said rancheria.

G. The County may impose real property taxes on Indian owned parcels that are not owned in trust by the United States of America, if the Indian property owner has not filed within the tax year an exemption form with the county assessor establishing the property owner's status as an Indian. The county in consultation with plaintiffs shall develop an exemption application form for this purpose. "Indian" for purposes of this paragraph

shall mean a member of a federally recognized Indian tribe, a person eligible for membership in a federally recognized Indian tribe or a person who is at least 1/4 Indian ancestry as established by the records of the Bureau of Indian Affairs ("BIA") or the property owner's tribe.

H. County maintained roads which service the plaintiff Rancheria shall be deemed to have been and now are lawfully owned and maintained by the County of Amador.

I. All claims whatsoever for money damages, other than the tax refunds under Paragraph E, against the Defendants resulting from the distribution of the assets of the plaintiff Rancheria under the Rancheria Act, which were or could have been made in this action shall be dismissed with prejudice.

K. Each party shall bear their own costs and attorneys' fees in prosecuting or defending this action.

DATED: April 3, 1987

CALIFORNIA INDIAN LEGAL SERVICES

By: _____
DAVID J. RAPPORT
Attorneys for Plaintiffs

DATED: April 21, 1987

MARY ANN MCNITT
Counsel for Amador County

By: _____
MARY ANN MCNITT
Attorneys for Amador County
Defendants

IT IS SO ORDERED

SPENCER WILLIAMS

SPENCER WILLIAMS
U.S. DISTRICT JUDGE

MOTION: It was moved by Supervisor Davenport, seconded by Supervisor Bamert, and unanimously carried to close the public hearing.

MOTION: It was moved by Supervisor Davenport, seconded by Supervisor Bamert, and unanimously carried to adopt the necessary resolution and file the Notice of Exemption.

RESOLUTION NO. 87-115

Resolution approving application for funding from the Native American allocation of the State CDBG Program

Ms. Dugan requested the Board correspond with Assemblyman Waters and Senator Garamendi and request their support of this grant. Chairman Martin indicated he would do this.

PUBLIC WORKS COMMITTEE: (0475/1) Mr. Gary Caldwell, Public Works Director, requested a meeting of the subject committee (Supervisors Begovich & Davenport) and this was scheduled for April 22, 1987 at 8:00 a.m.

LOCKWOOD JUNCTION FIRE DEPARTMENT: (0565/1) Supervisor Gale Cuneo reported representatives of the Lockwood Junction Fire Department have requested the County cancel a $550.00 invoice relative to start-up costs to form the District. Supervisor Davenport suggested this be paid back through an installment plan.

MOTION: It was moved by Supervisor Davenport, seconded by Supervisor Cuneo, and unanimously carried that the Fire Committee (Supervisors Bamert & Begovich) meet with Mr. Ell Gruber to arrange an installment payback plan.

Supervisor Cuneo agreed to correspond with Mr. Gruber and inform him of this action.

CLOSED SESSION: (0740/1) At 9:20 a.m., the Board recessed into closed session. Ms. Mary Ann McNett, Deputy County Counsel, was present during a portion of this session.

REGULAR SESSION: (0740/1) At 9:35 a.m., the Board reconvened into regular session. Chairman Martin reported during the closed session instructions were given to Deputy County Counsel relative to the Hardwick litigation and she was authorized to sign a settlement agreement. The Board also gave instructions to Counsel relative to the Prudential claim.

RECESS: (0755/1) At 9:36 a.m., Chairman Martin recessed the meeting until 10:30 a.m., at which time business was resumed.

WATER & WASTEWATER MATTERS (Roderick E. Schuler, Director)

County Service Areas: (0760/1) Ms. Rhonda D'Agostini, Accounting Technician, was present at this time and reviewed various delinquent water accounts for county service areas #1, #2, and #3. She also indicated partial payments were made relative to CSA #3, Lot 320 (Unit 6), and Lot 324 (Unit 6). After discussion, the following action was taken:

MOTION: It was moved by Supervisor Davenport, seconded by Supervisor Cuneo, and unanimously carried to authorize the water shut off on the delinquent water accounts presented, if payment is not received within 48 hours of the date the last notice was posted. Further, that the owners of Lot 320 (Unit 6) and Lot 324 (Unit 6) of CSA #3 be given a ten (10) day extension, since partial payments have been made, but if full payment is not received within 48 hours after the extension, the water is to be shut off.

HE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

ATTEST: APR 28 1987
CATHERINE J. GIANNINI, Clerk of the d of Supervisors, Amador County, ornia.

United States Code Annotated
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)
Title V. Disclosures and Discovery (Refs & Annos)

Federal Rules of Civil Procedure Rule 26

Rule 26. Duty to Disclose; General Provisions Governing Discovery

Currentness

<Notes of Decisions for 28 USCA Federal Rules of Civil Procedure Rule 26 are displayed in two separate documents. Notes of Decisions for subdivisions I to III are contained in this document. For Notes of Decisions for subdivisions IV to end, see second document for 28 USCA Federal Rules of Civil Procedure Rule 26.>

(a) Required Disclosures.

(1) ***Initial Disclosure.***

(A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy--or a description by category and location--of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party--who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) *Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) a forfeiture action in rem arising from a federal statute;

(iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(v) an action to enforce or quash an administrative summons or subpoena;

(vi) an action by the United States to recover benefit payments;

(vii) an action by the United States to collect on a student loan guaranteed by the United States;

(viii) a proceeding ancillary to a proceeding in another court; and

(ix) an action to enforce an arbitration award.

(C) *Time for Initial Disclosures--In General.* A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) *Time for Initial Disclosures--For Parties Served or Joined Later.* A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) *Basis for Initial Disclosure; Unacceptable Excuses.* A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) ***Disclosure of Expert Testimony*.**

(A) *In General*. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) *Witnesses Who Must Provide a Written Report*. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) *Witnesses Who Do Not Provide a Written Report*. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) *Time to Disclose Expert Testimony*. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) *Supplementing the Disclosure*. The parties must supplement these disclosures when required under Rule 26(e).

(3) ***Pretrial Disclosures.***

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness--separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence--separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) *Time for Pretrial Disclosures; Objections.* Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made--except for one under Federal Rule of Evidence 402 or 403--is waived unless excused by the court for good cause.

(4) ***Form of Disclosures.*** Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) Discovery Scope and Limits.

(1) ***Scope in General.*** Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) ***Limitations on Frequency and Extent.***

(A) *When Permitted.* By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36.

(B) *Specific Limitations on Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show

Gila River Reservation.
Irrigation.
Post, p. 1022.

For the construction of an irrigation system necessary for developing and furnishing a water supply for the irrigation of the lands of the Pima Indians in the vicinity of Sacaton, on the Gila River Indian Reservation, two hundred and fifty thousand dollars, to be expended under the direction of the Secretary of the Interior: *Provided further*, That when said irrigation system is in successful operation, and the Indians have become self-supporting, the cost of operating the said system shall be equitably apportioned upon the lands irrigated, and to the annual charge shall be added an amount sufficient to pay back into the Treasury the cost of the work within thirty years, suitable deduction being made for the amounts received from disposal of lands which now form a part of said reservation.

Proviso.
Annual charge.

California.

CALIFORNIA.

Mission Indians.
Support, etc.

For support and civilization of the Mission Indians in California, including pay of employees, five thousand dollars.

Northern Indians.
Support, etc.

For support and civilization of the Northern Indians, California, ten thousand dollars.

SHERMAN INSTITUTE.

Sherman Institute, Riverside.

For support and education of five hundred Indian pupils at the Sherman Institute, Riverside, California, eighty-three thousand five hundred dollars;

For pay of superintendent, two thousand two hundred and fifty dollars;

For additional water and sewer system, three thousand dollars;

For addition to dining hall and kitchen, twelve thousand dollars;

For stable, four thousand dollars;

For coal house, two thousand dollars;

For ice and cold storage, six thousand dollars;

For general repairs and improvements, five thousand dollars;

In all, one hundred and seventeen thousand seven hundred and fifty dollars.

Incidentals.

For general incidental expenses of the Indian service in California, including traveling expenses of agents, and support and civilization of Indians at the Round Valley, Hoopa Valley, and Tule River agencies, four thousand dollars;

And pay of employees at same agencies, seven thousand dollars;

In all, eleven thousand dollars.

Round Valley Reservation.
Improving.
Post, p. 1022.

For the purpose of removing obstructions from the bed of the stream which drains into the Eel River in the Round Valley Reservation, Mendocino County, California, eight thousand dollars.

Lands, etc., for Indians.

That the Secretary of the Interior be, and he is hereby, authorized to expend not to exceed one hundred thousand dollars to purchase for the use of the Indians in California now residing on reservations which do not contain land suitable for cultivation, and for Indians who are not now upon reservations in said State, suitable tracts or parcels of land, water, and water rights in said State of California, and have constructed the necessary ditches, flumes, and reservoirs for the purpose of irrigating said lands, and the irrigation of any lands now occupied by Indians in said State, and to construct suitable buildings upon said lands, and to fence the tracts of land so purchased, and fence, survey, and mark the boundaries of such Indian reservations in the State of California as the Secretary of the Interior may deem proper. One hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any funds in the Treasury not otherwise appropriated, for the purpose of carrying out the provisions of this Act.

Homeless Indians in California.
Purchase of lands for.

For the purchase of lands for the homeless Indians in California, including improvements thereon, for the use and occupancy of said Indians, $7,000, said funds to be expended under such regulations and conditions as the Secretary of the Interior may prescribe.

Full-blood Choctaws of Mississippi.
Purchase of lands, etc., for.

For the purchase of lands, including improvements thereon, not exceeding eighty acres for any one family, for the use and occupancy of the full-blood Choctaw Indians of Mississippi, to be expended under conditions to be prescribed by the Secretary of the Interior for its repayment to the United States under such rules and regulations as he may direct, $3,500.

Eastern Cherokees of North Carolina.
Final disposition of affairs of.
Vol. 43, p. 376.

For carrying out the provisions of the Act entitled "An Act providing for the final disposition of the affairs of the Eastern Band of Cherokee Indians in North Carolina," approved June 4, 1924, $8,000, or so much thereof as may be necessary.

Kiowas, Comanches, and Apaches, Okla.
Maintenance, support of homesteads, etc.

For maintenance and support and improvement of the homesteads of the Kiowa, Comanche, and Apache Tribes of Indians in Oklahoma, $100,000, to be paid from the funds held by the United States in trust for said Indians and to be expended under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That the Secretary of the Interior shall report to Congress on the first Monday in December, 1927, a detailed statement as to all moneys expended as provided for herein.

Proviso.
Report to Congress.

INDUSTRIAL ASSISTANCE AND ADVANCEMENT

Industrial work, etc.

Timber preservation, etc.
Matrons.

For the purposes of preserving living and growing timber on Indian reservations and allotments, and to educate Indians in the proper care of forests; for the employment of suitable persons as matrons to teach Indian women and girls housekeeping and other household duties, for necessary traveling expenses of such matrons, and for furnishing necessary equipments and supplies and renting quarters for them where necessary; for the conducting of experiments on Indian school or agency farms designed to test the possibilities of soil and climate in the cultivation of trees, grains, vegetables, cotton, and fruits, and for the employment of practical farmers and stockmen, in addition to the agency and school farmers now employed; for necessary traveling expenses of such farmers and stockmen and for furnishing necessary equipment and supplies for them; and for superintending and directing farming and stock raising among Indians, $402,000: *Provided*, That the foregoing shall not, as to timber, apply to the Menominee Indian Reservation in Wisconsin: *Provided further*, That not to exceed $20,000 of the amount herein appropriated may be used to conduct experiments on Indian school or agency farms to test the possibilities of soil and climate in the cultivation of trees, cotton, grain, vegetables, and fruits: *Provided also*, That the amounts paid to matrons, foresters, farmers, physicians, nurses, and other hospital employees, and stockmen provided for in this Act shall not be included within the limitations on salaries and compensation of employees contained in the Act of August 24, 1912.

Agricultural experiments.
Farmers and stockmen.
Provisos.
Menominee Reservation.
Soil, etc., experiments.
Pay not affected.
Vol. 37, p. 521.

Timber sales expenses.
Vol. 41, p. 415.

For expenses incidental to the sale of timber, $100,000, reimbursable to the United States as provided in the Act of February 14, 1920 (Forty-first Statutes at Large, page 415).

Encouraging farming, etc., for self support.

For the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops, $175,000, or so much thereof as may be necessary, which sum may be used for the purchase of seeds, animals, machinery, tools, implements, and other equipment necessary, in the discretion of the Secretary of the Interior, to enable Indians to become self-support-

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 45. Protection of Indians and Conservation of Resources

25 U.S.C.A. § 5108
Formerly cited as 25 USCA § 465

§ 5108. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

Currentness

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

CREDIT(S)

(June 18, 1934, c. 576, § 5, 48 Stat. 985; Nov. 1, 1988, Pub.L. 100-581, Title II, § 214, 102 Stat. 2941.)

Notes of Decisions (166)

25 U.S.C.A. § 5108, 25 USCA § 5108
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 45. Protection of Indians and Conservation of Resources

25 U.S.C.A. § 5110
Formerly cited as 25 USCA § 467

§ 5110. New Indian reservations

Currentness

The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

CREDIT(S)

(June 18, 1934, c. 576, § 7, 48 Stat. 986.)

Notes of Decisions (3)

25 U.S.C.A. § 5110, 25 USCA § 5110
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 45. Protection of Indians and Conservation of Resources

25 U.S.C.A. § 5125
Formerly cited as 25 USCA § 478

§ 5125. Acceptance optional

Currentness

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after June 18, 1934, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

CREDIT(S)

(June 18, 1934, c. 576, § 18, 48 Stat. 988.)

Notes of Decisions (5)

25 U.S.C.A. § 5125, 25 USCA § 5125
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

Public Law 85-671

AN ACT

August 18, 1958
[H. R. 2824]

To provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands, including minerals, water rights, and improvements located on the lands, and other assets of the following rancherias and reservations in the State of California shall be distributed in accordance with the provisions of this Act: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

Indian rancherias.
Land distribution.

SEC. 2. (a) The Indians who hold formal or informal assignments on each reservation or rancheria, or the Indians of such reservation or rancheria, or the Secretary of the Interior after consultation with such Indians, shall prepare a plan for distributing to individual Indians the assets of the reservation or rancheria, including the assigned and the unassigned lands, or for selling such assets and distributing the proceeds of sale, or for conveying such assets to a corporation or other legal entity organized or designated by the group, or for conveying such assets to the group as tenants in common. The Secretary shall provide such assistance to the Indians as is necessary to organize a corporation or other legal entity for the purposes of this Act.

Distribution of assets.

(b) General notice shall be given of the contents of a plan prepared pursuant to subsection (a) of this section and approved by the Secretary, and any Indian who feels that he is unfairly treated in the proposed distribution of the property shall be given an opportunity to present his views and arguments for the consideration of the Secretary. After such consideration, the plan or a revision thereof shall be submitted for the approval of the adult Indians who will participate in the distribution of the property, and if the plan is approved by a majority of such Indians who vote in a referendum called for that purpose by the Secretary the plan shall be carried out. It is the intention of Congress that such plan shall be completed not more than three years after it is approved.

Referendum.

(c) Any grantee under the provisions of this section shall receive an unrestricted title to the property conveyed, and the conveyance shall be recorded in the appropriate county office.

Record of conveyance.

(d) No property distributed under the provisions of this Act shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

Taxation.

SEC. 3. Before making the conveyances authorized by this Act on any rancheria or reservation, the Secretary of the Interior is directed:

(a) To cause surveys to be made of the exterior or interior boundaries of the lands to the extent that such surveys are necessary or

Surveys.

appropriate for the conveyance of marketable and recordable titles to the lands.

Improvement of roads.

(b) To complete any construction or improvement required to bring Indian Bureau roads serving the rancherias or reservations up to adequate standards comparable to standards for similar roads of the State or subdivision thereof. The Secretary is authorized to contract with the State of California or political subdivisions thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the State or local government the Secretary is authorized to convey rights-of-way for such roads, including any improvements thereon.

Water systems.

(c) to install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.

(d) To cancel all reimbursable indebtedness owing to the United States on account of unpaid construction, operation, and maintenance charges for water facilities on the reservation or rancheria.

Land exchanges.

(e) To exchange any lands within the rancheria or reservation that are held by the United States for the use of Indians which the Secretary and the Indians affected agree should be exchanged before the termination of the Federal trust for non-Indian lands and improvements of approximately equal value.

Water rights.

SEC. 4. Nothing in this Act shall abrogate any water right that exists by virtue of the laws of the United States. To the extent that the laws of the State of California are not now applicable to any water right appurtenant to any lands involved herein they shall continue to be inapplicable while the water right is in Indian ownership for a period not to exceed fifteen years after the conveyance pursuant to this Act of an unrestricted title thereto, and thereafter the applicability of such laws shall be without prejudice to the priority of any such right not theretofore based upon State law. During the time such State law is not applicable the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

Conveyances.

SEC. 5. (a) The Secretary of the Interior is authorized to convey without consideration to Indians who receive conveyances of land pursuant to this Act, or to a corporation or other legal entity organized by such Indians, or to a public or nonprofit body, any federally owned property on the reservations or rancherias subject to this Act that is not needed for the administration of Indian affairs in California.

(b) For the purposes of this Act, the assets of the Upper Lake Rancheria and the Robinson Rancheria shall include the one-hundred-and-sixty-acre tract set aside as a wood reserve for the Upper Lake Indians by secretarial order dated February 15, 1907.

(c) The Secretary of the Interior is authorized to sell the five hundred and sixty acres of land, more or less, which were withdrawn from entry, sale, or other disposition, and set aside for the Indians of Indian Ranch, Inyo County, California, by the Act of March 3, 1928 (45 Stat. 162), and to distribute the proceeds of sale among the heirs of George Hanson.

Disbursements.

SEC. 6. The Secretary of the Interior shall disburse to the Indians of the rancherias and reservations that are subject to this Act all funds of such Indians that are in the custody of the United States.

Claims.

SEC. 7. Nothing in this Act shall affect any claim filed before the Indian Claims Commission, or the right, if any, of the Indians sub-

ject to this Act to share in any judgment recovered against the United States on behalf of the Indians of California.

Appointment of guardians.

SEC. 8. Before conveying or distributing property pursuant to this Act, the Secretary of the Interior shall protect the rights of individual Indians who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such Indians in courts of competent jurisdiction, or by such other means as he may deem adequate, without application from such Indians, including but not limited to the creation of a trust for such Indians' property with a trustee selected by the Secretary, or the purchase by the Secretary of annuities for such Indians.

Educational training.

SEC. 9. Prior to the termination of the Federal trust relationship in accordance with the provisions of this Act, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the Indians to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

Finality of plan.

SEC. 10. (a) The plan for the distribution of the assets of a rancheria or reservation, when approved by the Secretary and by the Indians in a referendum vote as provided in subsection 2 (b) of this Act, shall be final, and the distribution of assets pursuant to such plan shall not be the basis for any claim against the United States by an Indian who receives or is denied a part of the assets distributed.

Laws applicable.

(b) After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States.

Revocation.
25 USC 461-479.

SEC. 11. The constitution and corporate charter adopted pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended, by any rancheria or reservation subject to this Act shall be revoked by the Secretary of the Interior when a plan is approved by a majority of the adult Indians thereof pursuant to subsection 2 (b) of this Act.

Rules and regulations.

SEC. 12. The Secretary of the Interior is authorized to issue such rules and regulations and to execute or approve such conveyancing instruments as he deems necessary to carry out the provisions of this Act.

Appropriation.

SEC. 13. There is authorized to be appropriated not to exceed $509,235 to carry out the provisions of this Act.

Approved August 18, 1958.

Public Law 88-419

AN ACT

August 11, 1964
[H. R. 7833]

To amend the Act entitled "An Act to provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes", approved August 18, 1958 (72 Stat. 619).

Indian rancherias.
Land distribution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first section of the Act entitled "An Act to provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes," approved August 18, 1958 (72 Stat. 619), is amended to read as follows: "the lands, including minerals, water rights, and improvements located on the lands, and other assets of the rancherias and reservations lying wholly within the State of California shall be distributed in accordance with the provisions of this Act when such distribution is requested by a majority vote of the adult Indians of a rancheria or reservation or of the adult Indians who hold formal or informal assignments on the rancheria or reservation, as determined by the Secretary of the Interior. The requirement for a majority vote shall not apply to the rancherias and reservations that were at any time named in this section."

Distribution of assets.

(b) Section 2(a) of such Act is amended by deleting "The Indians who hold formal or informal assignments on each reservation or rancheria, or the Indians of such reservation or rancheria, or the Secretary of the Interior after consultation with such Indians," and by substituting "When the Indians of a rancheria or reservation request a distribution of assets in accordance with the provisions of this Act, they, or the Secretary of the Interior after consultation with them,".

(c) Section 2(a) of such Act is further amended by changing the period at the end of the first sentence to a colon and adding: "*Provided*, That the provisions of this section with respect to a request for distribution of assets shall not apply to any case in which the requirement for such request is waived by section 1 of this Act, and in any such case the plan shall be prepared as though request therefor had been made."

(d) Section 2(b) of such Act is amended by changing the period at the end of the penultimate sentence to a colon and adding: "*Provided*, That the provisions of such plan may be modified with the approval of the Secretary and consent of the majority of the distributees."

(e) Section 3(c) of such Act is amended to read as follows:

Sanitation and irrigation facilities.

"(c) To construct, improve, install, extend, or otherwise provide, by contract or otherwise, sanitation facilities (including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures) and irrigation facilities for Indian homes, communities, and lands, as he and the Indians agree, within a reasonable time, should be completed by the United States: *Provided*, That with respect to sanitation facilities, as hereinbefore described, the functions specified in this paragraph, including agreements with Indians with respect to such facilities, shall be performed by the Secretary of Health, Education, and Welfare in accordance with the provisions of section 7 of the Act of August 4, 1954 (58 Stat. 674), as amended (42 U.S.C. 2004a)."

68 Stat. 674; 73 Stat. 267.

(f) Section 3(e) of such Act is amended by deleting the word "non-Indian".

(g) Section 5 of such Act is amended by adding a new subsection as follows:

"(d) Any rancheria or reservation lying wholly within the State of California that is held by the United States for the use of Indians of California and that was not occupied on January 1, 1964, by Indians under a formal or informal assignment shall be sold by the Secretary of the Interior and the proceeds of the sale shall be deposited in the Treasury of the United States to the credit of the Indians of California. Any rancheria or reservation lying wholly within the State of California that is held by the United States for a named tribe, band, or group that was not occupied on January 1, 1964, may be sold by the Secretary of the Interior and the proceeds shall be deposited to the credit of the tribe, band, or group." Unoccupied lands. Sale.

(h) Section 10(b) of such Act is amended (1) by inserting after the words "their immediate families" the words "who are not members of any other tribe or band of Indians", (2) by inserting after "because of their status as Indians", the words "all restrictions and tax exemptions applicable to trust or restricted land or interests therein owned by them are terminated,", and (3) by adding at the end of section 10(b) the following sentence: "The provisions of this subsection, as amended, shall apply in the case of a distribution of assets made either before or after the amendment of the subsection."

(i) Section 11 of such Act is amended by inserting immediately after the words "as amended," the words "or any other authority,".

(j) Section 13 of such Act is amended by deleting "not to exceed $509,235" and by substituting "such sums as may be necessary".

Approved August 11, 1964.

Public Law 88-420

AN ACT

August 11, 1964
[H. R. 11622]

To permit the vessel United States ship Alabama to pass through the Panama Canal without payment of tolls.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, in order to facilitate the movement of the vessel United States ship Alabama from the west coast of the United States to a site in the State of Alabama where it is to be established as a public shrine, the vessel United States ship Alabama shall be permitted to pass through the Panama Canal from west to east without payment of tolls of any kind. U.S.S. *Alabama*.

For the purposes of such transit through the Panama Canal the said vessel shall be regarded as a vessel operated by the United States within the meaning of section 412(c) of title 2 of Canal Zone Code (76A Stat. 27).

Approved August 11, 1964.

31-667 O-65—28

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2701

§ 2701. Findings

Currentness

The Congress finds that--

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

CREDIT(S)

(Pub.L. 100-497, § 2, Oct. 17, 1988, 102 Stat. 2467.)

Notes of Decisions (31)

25 U.S.C.A. § 2701, 25 USCA § 2701
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2702

§ 2702. Declaration of policy

Currentness

The purpose of this chapter is--

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

CREDIT(S)
(Pub.L. 100-497, § 3, Oct. 17, 1988, 102 Stat. 2467.)

Notes of Decisions (4)

25 U.S.C.A. § 2702, 25 USCA § 2702
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2703

§ 2703. Definitions

Currentness

For purposes of this chapter--

(1) The term "Attorney General" means the Attorney General of the United States.

(2) The term "Chairman" means the Chairman of the National Indian Gaming Commission.

(3) The term "Commission" means the National Indian Gaming Commission established pursuant to section 2704 of this title.

(4) The term "Indian lands" means--

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which--

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

(6) The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term "class II gaming" means--

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)--

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that--

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include--

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on October 17, 1988, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after October 17, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(E) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

(9) The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term "Secretary" means the Secretary of the Interior.

CREDIT(S)

(Pub.L. 100-497, § 4, Oct. 17, 1988, 102 Stat. 2467; Pub.L. 102-238, § 2(a), Dec. 17, 1991, 105 Stat. 1908; Pub.L. 102-497, § 16, Oct. 24, 1992, 106 Stat. 3261.)

Notes of Decisions (37)

25 U.S.C.A. § 2703, 25 USCA § 2703
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2704

§ 2704. National Indian Gaming Commission

Currentness

(a) Establishment

There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

(b) Composition; investigation; term of office; removal

(1) The Commission shall be composed of three full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) two associate members who shall be appointed by the Secretary of the Interior.

(2)(A) The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than two members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

(4)(A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

(B) Of the initial members of the Commission--

(i) two members, including the Chairman, shall have a term of office of three years; and

(ii) one member shall have a term of office of one year.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who--

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 2711 of this title.

(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies

Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6) of this section.

(d) Quorum

Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

(e) Vice Chairman

The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) Meetings

The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

(g) Compensation

(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of Title 5.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of Title 5.

(3) All members of the Commission shall be reimbursed in accordance with Title 5 for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

CREDIT(S)

(Pub.L. 100-497, § 5, Oct. 17, 1988, 102 Stat. 2469.)

25 U.S.C.A. § 2704, 25 USCA § 2704
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2705

§ 2705. Powers of Chairman

Currentness

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to--

(1) issue orders of temporary closure of gaming activities as provided in section 2713(b) of this title;

(2) levy and collect civil fines as provided in section 2713(a) of this title;

(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of this title; and

(4) approve management contracts for class II gaming and class III gaming as provided in sections 2710(d)(9) and 2711 of this title.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

CREDIT(S)
(Pub.L. 100-497, § 6, Oct. 17, 1988, 102 Stat. 2470.)

25 U.S.C.A. § 2705, 25 USCA § 2705
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2706

§ 2706. Powers of Commission

Effective: May 12, 2006
Currentness

(a) Budget approval; civil fines; fees; subpoenas; permanent orders

The Commission shall have the power, not subject to delegation--

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 2717 of this title;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 2713(a) of this title;

(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 2717 of this title;

(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 2715 of this title; and

(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 2713(b)(2) of this title.

(b) Monitoring; inspection of premises; investigations; access to records; mail; contracts; hearings; oaths; regulations

The Commission--

(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;

(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) shall conduct or cause to be conducted such background investigations as may be necessary;

(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter;

(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;

(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter.

(c) Omitted

(d) Application of Government Performance and Results Act

(1) In general

In carrying out any action under this chapter, the Commission shall be subject to the Government Performance and Results Act of 1993 (Public Law 103-62; 107 Stat. 285).

(2) Plans

In addition to any plan required under the Government Performance and Results Act of 1993 (Public Law 103-62; 107 Stat. 285), the Commission shall submit a plan to provide technical assistance to tribal gaming operations in accordance with that Act.

CREDIT(S)

(Pub.L. 100-497, § 7, Oct. 17, 1988, 102 Stat. 2470; Pub.L. 109-221, Title III, § 301(a), May 12, 2006, 120 Stat. 341.)

Notes of Decisions (11)

25 U.S.C.A. § 2706, 25 USCA § 2706
Current through P.L. 115-22. Title 26 current through 115-22

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2707

§ 2707. Commission staffing

Currentness

(a) General Counsel

The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of Title 5.

(b) Staff

The Chairman shall appoint and supervise other staff of the Commission without regard to the provisions of Title 5 governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) Temporary services

The Chairman may procure temporary and intermittent services under section 3109(b) of Title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Federal agency personnel

Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this chapter, unless otherwise prohibited by law.

(e) Administrative support services

The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

CREDIT(S)

(Pub.L. 100-497, § 8, Oct. 17, 1988, 102 Stat. 2471.)

25 U.S.C.A. § 2707, 25 USCA § 2707

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2708

§ 2708. Commission; access to information

Currentness

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

CREDIT(S)

(Pub.L. 100-497, § 9, Oct. 17, 1988, 102 Stat. 2472.)

25 U.S.C.A. § 2708, 25 USCA § 2708
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2709

§ 2709. Interim authority to regulate gaming

Currentness

Notwithstanding any other provision of this chapter, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before October 17, 1988, relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

CREDIT(S)

(Pub.L. 100-497, § 10, Oct. 17, 1988, 102 Stat. 2472.)

25 U.S.C.A. § 2709, 25 USCA § 2709
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

25 U.S.C.A. § 2710

§ 2710. Tribal gaming ordinances

Currentness

(a) Jurisdiction over class I and class II gaming activity

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if--

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that--

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than--

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which--

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes--

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if--

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if--

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which--

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section [1]

may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has--

(A) conducted its gaming activity in a manner which--

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for--

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation--

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706 (b) of this title;

(B) the tribe shall continue to submit an annual independent audit as required by subsection (b)(2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this title in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are--

(A) authorized by an ordinance or resolution that--

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b) of this section, and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that--

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711(e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection--

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to--

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 1175 of Title 15 shall not apply to any gaming conducted under a Tribal-State compact that--

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)(A) The United States district courts shall have jurisdiction over--

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that--

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe [2] to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court--

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures--

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates--

(i) any provision of this chapter,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

(e) Approval of ordinances

For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

CREDIT(S)

(Pub.L. 100-497, § 11, Oct. 17, 1988, 102 Stat. 2472.)

VALIDITY

<The United States Supreme Court has held that the grant of federal court jurisdiction in provision of the Indian Gaming Regulatory Act, section 11(d)(7) of Pub.L. 100-497, abrogating the States' Eleventh Amendment sovereign immunity, was unconstitutional. Seminole Tribe of Florida v. Florida, U.S.Fla.1996, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252.>

Notes of Decisions (242)

Footnotes

1 So in original. Probably should be followed by a comma.

2 So in original. Probably should not be capitalized.

25 U.S.C.A. § 2710, 25 USCA § 2710

Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2711

§ 2711. Management contracts

Currentness

(a) Class II gaming activity; information on operators

(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 2710(b)(1) of this title, but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this chapter, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) Approval

The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least--

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) Fee based on percentage of net revenues

(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) Period for approval; extension

By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) Disapproval

The Chairman shall not approve any contract if the Chairman determines that--

(1) any person listed pursuant to subsection (a)(1)(A) of this section--

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this chapter or has refused to respond to questions propounded pursuant to subsection (a)(2) of this section; or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this chapter; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

(f) Modification or voiding

The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) Interest in land

No management contract for the operation and management of a gaming activity regulated by this chapter shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) Authority

The authority of the Secretary under section 81 of this title, relating to management contracts regulated pursuant to this chapter, is hereby transferred to the Commission.

(i) Investigation fee

The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2712

§ 2712. Review of existing ordinances and contracts

Currentness

(a) Notification to submit

As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to October 17, 1988, adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this chapter, or any amendment made by this chapter, unless disapproved under this section.

(b) Approval or modification of ordinance or resolution

(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant to subsection (a) of this section, the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 2710(b) of this title.

(2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section conforms to the requirements of section 2710(b) of this title, the Chairman shall approve it.

(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section does not conform to the requirements of section 2710(b) of this title, the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance.

(c) Approval or modification of management contract

(1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a) of this section, the Chairman shall subject such contract to the requirements and process of section 2711 of this title.

(2) If the Chairman determines that a management contract submitted under subsection (a) of this section, and the management contractor under such contract, meet the requirements of section 2711 of this title, the Chairman shall approve the management contract.

(3) If the Chairman determines that a contract submitted under subsection (a) of this section, or the management contractor under a contract submitted under subsection (a) of this section, does not meet the requirements of section 2711 of this title, the Chairman shall provide written notification to the parties to such contract of necessary modifications and the parties shall have not more than 120 days to come into compliance. If a management contract has been approved by the Secretary prior to October 17, 1988, the parties shall have not more than 180 days after notification of necessary modifications to come into compliance.

CREDIT(S)

(Pub.L. 100-497, § 13, Oct. 17, 1988, 102 Stat. 2481.)

Notes of Decisions (6)

25 U.S.C.A. § 2712, 25 USCA § 2712
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2713

§ 2713. Civil penalties

Currentness

(a) Authority; amount; appeal; written complaint

(1) Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this chapter, any regulation prescribed by the Commission pursuant to this chapter, or tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor is engaged in activities regulated by this chapter, by regulations prescribed under this chapter, or by tribal regulations, ordinances, or resolutions, approved under section 2710 or 2712 of this title, that may result in the imposition of a fine under subsection (a)(1) of this section, the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b) Temporary closure; hearing

(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this chapter, of regulations prescribed by the Commission pursuant to this chapter, or of tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

(c) Appeal from final decision

A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of Title 5.

(d) Regulatory authority under tribal law

Nothing in this chapter precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this chapter or with any rules or regulations adopted by the Commission.

CREDIT(S)

(Pub.L. 100-497, § 14, Oct. 17, 1988, 102 Stat. 2482.)

Notes of Decisions (7)

25 U.S.C.A. § 2713, 25 USCA § 2713
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2714

§ 2714. Judicial review

Currentness

Decisions made by the Commission pursuant to sections 2710, 2711, 2712, and 2713 of this title shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of Title 5.

CREDIT(S)

(Pub.L. 100-497, § 15, Oct. 17, 1988, 102 Stat. 2483.)

Notes of Decisions (57)

25 U.S.C.A. § 2714, 25 USCA § 2714
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2715

§ 2715. Subpoena and deposition authority

Currentness

(a) Attendance, testimony, production of papers, etc.

By a vote of not less than two members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Geographical location

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Refusal of subpoena; court order; contempt

Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Depositions; notice

A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Oath or affirmation required

Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking

the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witness fees

Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

CREDIT(S)

(Pub.L. 100-497, § 16, Oct. 17, 1988, 102 Stat. 2483.)

25 U.S.C.A. § 2715, 25 USCA § 2715
Current through P.L. 115-22. Title 26 current through 115-22

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2716

§ 2716. Investigative powers

Currentness

(a) Confidential information

Except as provided in subsection (b) of this section, the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of Title 5.

(b) Provision to law enforcement officials

The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

(c) Attorney General

The Attorney General shall investigate activities associated with gaming authorized by this chapter which may be a violation of Federal law.

CREDIT(S)

(Pub.L. 100-497, § 17, Oct. 17, 1988, 102 Stat. 2484.)

25 U.S.C.A. § 2716, 25 USCA § 2716
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2717

§ 2717. Commission funding

Effective: May 12, 2006
Currentness

(a)(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this chapter.

(2)(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be--

(i) no more than 2.5 percent of the first $1,500,000, and

(ii) no more than 5 percent of amounts in excess of the first $1,500,000,

of the gross revenues from each activity regulated by this chapter.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed 0.080 percent of the gross gaming revenues of all gaming operations subject to regulation under this chapter.

(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this chapter for the operation of gaming.

(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 2718 of this title, in an amount equal the amount of funds derived from assessments authorized by subsection (a) of this section for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

CREDIT(S)

(Pub.L. 100-497, § 18, Oct. 17, 1988, 102 Stat. 2484; Pub.L. 105-83, Title I, § 123(a)(1), (2)(A), (B), Nov. 14, 1997, 111 Stat. 1566; Pub.L. 109-221, Title III, § 301(b), May 12, 2006, 120 Stat. 341.)

25 U.S.C.A. § 2717, 25 USCA § 2717
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2717a

§ 2717a. Availability of class II gaming activity fees to carry out duties of Commission

Currentness

In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 2717 of this title shall be available to carry out the duties of the Commission, to remain available until expended.

CREDIT(S)

(Pub.L. 101-121, Title I, Oct. 23, 1989, 103 Stat. 718.)

25 U.S.C.A. § 2717a, 25 USCA § 2717a
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2718

§ 2718. Authorization of appropriations

Effective: November 26, 1997
Currentness

(a) Subject to section 2717 of this title, there are authorized to be appropriated, for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title.

(b) Notwithstanding section 2717 of this title, there are authorized to be appropriated to fund the operation of the Commission, $2,000,000 for fiscal year 1998, and $2,000,000 for each fiscal year thereafter. The amounts authorized to be appropriated in the preceding sentence shall be in addition to the amounts authorized to be appropriated under subsection (a) of this section.

CREDIT(S)

(Pub.L. 100-497, § 19, Oct. 17, 1988, 102 Stat. 2485; Pub.L. 102-238, § 2(b), Dec. 17, 1991, 105 Stat. 1908; Pub.L. 105-83, Title I, § 123(b), Nov. 14, 1997, 111 Stat. 1566; Pub.L. 105-119, Title VI, § 627, Nov. 26, 1997, 111 Stat. 2522.)

25 U.S.C.A. § 2718, 25 USCA § 2718
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2719

§ 2719. Gaming on lands acquired after October 17, 1988

Currentness

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless--

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and--

(A) such lands are located in Oklahoma and--

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when--

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of--

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to--

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 5108 and 5110 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of Title 26

(1) The provisions of Title 26 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

CREDIT(S)

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2720

§ 2720. Dissemination of information

Currentness

Consistent with the requirements of this chapter, sections 1301, 1302, 1303 and 1304 of Title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter.

CREDIT(S)

(Pub.L. 100-497, § 21, Oct. 17, 1988, 102 Stat. 2486.)

25 U.S.C.A. § 2720, 25 USCA § 2720
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2721

§ 2721. Severability

Currentness

In the event that any section or provision of this chapter, or amendment made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

CREDIT(S)

(Pub.L. 100-497, § 22, Oct. 17, 1988, 102 Stat. 2486.)

25 U.S.C.A. § 2721, 25 USCA § 2721
Current through P.L. 115-22. Title 26 current through 115-22

End of Document

Code of Federal Regulations
Title 25. Indians
Chapter I. Bureau of Indian Affairs, Department of the Interior
Subchapter N. Economic Enterprises
Part 292. Gaming on Trust Lands Acquired After October 17, 1988 (Refs & Annos)
Subpart A. General Provisions

25 C.F.R. § 292.2

§ 292.2 How are key terms defined in this part?

Effective: June 19, 2008
Currentness

For purposes of this part, all terms have the same meaning as set forth in the definitional section of IGRA, 25 U.S.C. 2703. In addition, the following terms have the meanings given in this section.

Appropriate State and local officials means the Governor of the State and local government officials within a 25–mile radius of the proposed gaming establishment.

BIA means Bureau of Indian Affairs.

Contiguous means two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point.

Former reservation means lands in Oklahoma that are within the exterior boundaries of the last reservation that was established by treaty, Executive Order, or Secretarial Order for an Oklahoma tribe.

IGRA means the Indian Gaming Regulatory Act of 1988, as amended and codified at 25 U.S.C. 2701–2721.

Indian tribe or tribe means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized by the Secretary as having a government-to-government relationship with the United States and is eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as evidenced by inclusion of the tribe on the list of recognized tribes published by the Secretary under 25 U.S.C. 479a–1.

Land claim means any claim by a tribe concerning the impairment of title or other real property interest or loss of possession that:

(1) Arises under the United States Constitution, Federal common law, Federal statute or treaty;

(2) Is in conflict with the right, or title or other real property interest claimed by an individual or entity (private, public, or governmental); and

(3) Either accrued on or before October 17, 1988, or involves lands held in trust or restricted fee for the tribe prior to October 17, 1988.

Legislative termination means Federal legislation that specifically terminates or prohibits the government-to-government relationship with an Indian tribe or that otherwise specifically denies the tribe, or its members, access to or eligibility for government services.

Nearby Indian tribe means an Indian tribe with tribal Indian lands located within a 25–mile radius of the location of the proposed gaming establishment, or, if the tribe has no trust lands, within a 25–mile radius of its government headquarters.

Newly acquired lands means land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988.

Office of Indian Gaming means the office within the Office of the Assistant Secretary–Indian Affairs, within the Department of the Interior.

Regional Director means the official in charge of the BIA Regional Office responsible for BIA activities within the geographical area where the proposed gaming establishment is to be located.

Reservation means:

(1) Land set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or Federal statute for the tribe, notwithstanding the issuance of any patent;

(2) Land of Indian colonies and rancherias (including rancherias restored by judicial action) set aside by the United States for the permanent settlement of the Indians as its homeland;

(3) Land acquired by the United States to reorganize adult Indians pursuant to statute; or

(4) Land acquired by a tribe through a grant from a sovereign, including pueblo lands, which is subject to a Federal restriction against alienation.

Secretarial Determination means a two-part determination that a gaming establishment on newly acquired lands:

(1) Would be in the best interest of the Indian tribe and its members; and

(2) Would not be detrimental to the surrounding community.

Secretary means the Secretary of the Interior or authorized representative.

Significant historical connection means the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land.

Surrounding community means local governments and nearby Indian tribes located within a 25–mile radius of the site of the proposed gaming establishment. A local government or nearby Indian tribe located beyond the 25–mile radius may petition for consultation if it can establish that its governmental functions, infrastructure or services will be directly, immediately and significantly impacted by the proposed gaming establishment.

SOURCE: 73 FR 29375, May 20, 2008; 73 FR 35579, June 24, 2008, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 2, 9, 2719, 43 U.S.C. 1457.

