No. 19-16278

UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

SPRAWLDEF, et al.,

Petitioners-Appellees,

v.

GUIDIVILLE RANCHERIA OF CALIFORNIA,

Respondent-Appellee,

CITY OF RICHMOND, et al.,

Respondents.

Appeal from a Decision of the United States District Court for the Northern District of California, No. 18-cv-03918– Honorable Yvonne Gonzalez Rogers

APPELLEES' ANSWER BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, none of the appellee/petitioners has parent companies, subsidiaries or affiliates that have issued shares to the public in the United States or abroad.

Date: May 26, 2020

_____/s/_____
NORMAN LA FORCE
Attorney for Intervener-Appellees
SPRAWLDEF, et. al.

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I. STATEMENT OF JURISDICTION

The district court had jurisdiction pursuant to 28 U.S.C. §1343 (section 1983 jurisdiction) and 28 U.S.C. §201 (declaratory judgment). This Court has jurisdiction under 28 U.S.C. §1291. The district court interlocutory order was final and appealable.

> "The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States…" 28 USC §1291.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Is express consent to the district court's continued jurisdiction over a stipulated settlement and judgment based on a lawsuit in which the Tribe is the plaintiff a waiver of tribal sovereign immunity?

2. Can the Tribe assert tribal sovereign immunity where collateral attack on the stipulated settlement must be decided where a different party to the settlement violated separate State laws governing how it can enter into the stipulated settlement?

3. Even if tribal sovereign immunity applies, does the Tribe meet the requirements under Federal Rule of Civil Procedure, Rule 19(b)?

4. Is this action moot despite this court denying the Tribe's motion for vacatur?

III. STATEMENT OF THE CASE

Point Molate, on the San Francisco Bay shoreline of the City of Richmond, is a decommissioned United States Navy fuel depot. (Administrative Record, AR 007, ECF 37.) In 1996, the Department of Defense transferred Point Molate to the City of Richmond, enabling the City to control its development. (AR 073.)

Point Molate development is beset with obstacles, including its location next to an oil refinery, its designation as a historic district with associated restrictions, unfunded infrastructure and cleanup costs, structural and building code deficiencies, lead and asbestos contamination, permitting challenges based on its shoreline location, recreational values, and habitat and wildlife constraints, including one of the best fragile eelgrass beds in the San Francisco Bay. (AR 119-126.)

Even now, environmental constraints on development persist. As indicated by petitioners' Exhibit F, a March 2019 report to the City Council, pollution leaking from the site into the San Francisco Bay has resulted in a Regional Water Quality Control Board cleanup order.

The respondents are also parties to the matter of *Guidiville Rancheria et. al v. United States et. al.*, CV 12-1326-YGR. In 2004 the City entered into a Land Disposition Agreement (LDA) with Upstream Point Molate ("Upstream") to pursue development of a casino to be operated by the Guidiville Tribe ("the Tribe.") This casino required federal

approvals for the land to be transferred to the Tribe. The LDA did not bind the City to approve the casino. It required the City to comply with all State and municipal laws concerning amending the City's general plan, zoning of property, and in an open planning process that required the City to approve the casino in public hearings. (AR 5019.)

After Upstream and Tribe failed to obtain federal government approvals and the casino project lost an advisory public vote of Richmond voters, the City withdrew its support for the casino project. (AR 5019.) Upstream and the Tribe then filed *Guidiville*. In 2017, after the court dismissed *Guidiville* and after an appeal to the Ninth Circuit, the Ninth Circuit remanded with leave to amend the breach of contract actions against the City. Subsequently, on April 12, 2018, Upstream, the Tribe, and the City entered into a settlement through what they called a stipulated Judgment with the trial court retaining jurisdiction over that stipulated Settlement Judgment. (See AR 5088.)

The instant action arises out of that stipulated Settlement Judgment in *Guidiville.* Petitioners are environmental organizations and Richmond residents. The petition at bar was filed in State court alleging that the City violated the State's open meeting law, the Brown Act, Government Code §§ 54950 et seq. as well as other State laws. (ECF 2.) Specifically, petitioners allege the *Guidiville* settlement improperly granted land use rights to Upstream and the Tribe, including, but not limited to, minimum housing numbers and

density, mandated a percentage allocation of open space and development and other land use requirements without having first gone through a public planning process as required by law. California's Brown Act requires such land use policy actions be done in open meetings that comply with the planning and land use laws before the City could make binding agreements with a private party. The Brown Act's "litigation exemption" does not allow closed negotiations "used as a subterfuge to reach non-litigation oriented land use policy decisions." *Trancas Property Owners Assn. v. City of Malibu*, 138 Cal.App.4th 172, 186 (2006). It should be noted here that the Tribe raises an irrelevant issue that the petitioners sought to intervene in the underlying action that Upstream and the Tribe had brought against the City, but that the court denied that motion without prejudice due to issues concerning standing. That issue became moot once Upstream, the Tribe, and the City entered into the illegal stipulated Settlement Judgment, and petitioners filed their action over the Brown Act violations and other State laws.

After removal to federal court, the trial court directed the petitioners and the City to consider joining Upstream and the Tribe. After stipulation and leave by the Court, the Tribe and Upstream were amended in as parties and were served. (ECF 27 and 28.) The stipulation, stated in ECF 25, noted the contention of Upstream and the Tribe that they were necessary and indispensable parties, but were joined "Without conceding any of Upstream's or the Tribe's contentions or that Upstream or the Tribe are appropriate

parties to the present writ." Thereupon, the Tribe moved to dismiss the instant case under Federal Rule of Civil Procedure, Rule 12(b)(7), arguing that it is an indispensable party and that its tribal sovereign immunity required dismissal of the case under FRCP 19.

The trial court denied the Tribe's motion. It found that the Tribe expressly and unambiguously waived any tribal sovereign immunity here when it entered the *Guidiville* stipulated judgment. Paragraph 47 of the Guidiville judgment requires the Court's continued jurisdiction over its enforcement. As was the case where the Court found the Tribe liable for attorney fees in *Guidiville* (ECF 289), the *Guidiville* judgment "is within the scope of waiver of immunity worked by the filing of the lawsuit herein."

The district court's rationale was straightforward. Citing section 47 of the *Guidiville* settlement, the district court ruled:

"The petition herein is a collateral challenge to the enforceability of that judgment on the grounds that the City did not have proper authority to enter into it at the time due to the public entity notice requirements in the Brown Act. The instant action falls within this Court's jurisdiction to modify and enforce the stipulated judgment." (ER 05, ECF 58, page 7.)

This collateral challenge constituted a waiver, the district court found, because:

"The Tribe expressly submitted to the Court's continued jurisdiction to enforce, and implicitly to modify, the judgment under the terms of the settlement agreement."

Reconciling this determination with the question of the Tribe's necessity in the SPRAWLDEF action, the district court noted:

"The relief sought—voiding an existing agreement under which the Tribe has both a monetary entitlement to sale proceeds and an option to acquire Point Molate real property—would interfere with those interests and obligations as a practical matter. Fed. R. Civ. P. 19(a)(1)(B)." (ER 07.)

The City's Brown Act violation has already been tested in the City's motion to dismiss. The City moved to dismiss on grounds of the insufficiency of the claims, ripeness, standing, and on its argument that Brown Act violation cannot void "contractual obligations." (ECF 12-1). With the Court poised to deny those defenses, the City withdrew its motion. Briefing on the merits by the City and petitioners has been filed along with the administrative record. (ECF 36, 37, 38 43). That record supports the petitioners' allegations. The City locked in Point Molate's future land use without required public participation. The City's own resolution had previously directed staff to "…further review the Land Use Designations (LUD's) for Point Molate in the General Plan and that this should be done in conjunction with public input and an open process through the Planning Commission and City Council." (AR 5017 (staff report November 21, 2016); AR 4003-4004.)

The Brown Act's right of action is intended to correct and forestall opaque local government actions. This purpose is expressed in the statutory language:

California Gov. Code §54960(a): "The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided." (emphasis added.)

"The public interest is an important consideration in the exercise of equitable discretion in the enforcement of statutes." *Id.* See *Amoco Production Co. v. Village of Gambell, Alaska* (1987) 480 U.S. 531, 542 ("…particular regard should be given to the public interest…").

The Tribe thereupon appealed on June 24, 2019. (ECF 60.)

IV. STANDARD OF REVIEW

While recognizing that review of a Rule 19 decision is for abuse of discretion, the Tribe argues that here the district court's ruling was on a matter of law, and that therefore review is de novo. "We review de novo the question whether a tribe feasibly can be joined." *Dine Citizens Against Ruining Our Environment v. Bureau of Indian Affairs*, 932 F.3d 843, 851 (9th Cir. 2019).

"The inquiry is a practical one and fact specific." *Makah Indian Tribe v. Verity,* 910 F.2d 555, 558 (9th Cir. 1990).

V. SUMMARY OF ARGUMENT

Appellant Guidiville Rancheria argues it never waived tribal sovereign immunity despite having filed a lawsuit in federal district court against the City of Richmond over its failed development scheme with its business partner Upstream and then entering into a stipulated Settlement-Judgment in which the district court has continuing jurisdiction to enforce that Settlement-Judgment.

The Tribe's attempt to pick and chose how and when it uses the federal courts for its ends results in it waiving its tribal sovereign immunity. That is what the trial court found when it ruled that the Tribe could not enlist the court to enforce its settlement with the City of Richmond, then restrict the court's ability to modify the *Guidiville* settlement

should the court invalidate the City's entry into the settlement because the City violated State law separate and unrelated to the Tribe's own actions.

The Tribe argues here that "overwhelming tidal wave of case law" holds that the requisite express intent is lacking here. The Tribe's analysis is wrong. It ignores the fact that the Tribe filed the lawsuit against the City that resulted in stipulated Settlement Judgment being entered into. In that Settlement Judgment the Tribe agreed that the trial court continued to have jurisdiction over that Settlement Judgment. For that stipulated Settlement Judgment to be legal and binding, the City had to comply with the State's planning and zoning laws and its laws concerning open government. That Settlement Judgment included actions on the part of the City that required compliance with California planning and zoning laws, the California Environmental Quality Act, and other statutes governing the public's right for transparent and open government that the public has a right to enforce. The Tribe waived its tribal sovereign immunity when it agreed to a stipulated Settlement Judgment that included the continuing jurisdiction of the court for enforcement and the fact that the City's agreement to settle had to be legally valid.

The Tribe's real purpose here is to carry water for the City of Richmond, to assert a procedural bar to petitioners' claim and to further the Tribe and its partner-developer Upstream Point Molate's attempt to make money through a settlement that did not comply with the law. The Tribe consented to its waiver of immunity when it entered into

a Settlement Judgment, and then in response to the petitioners' lawsuit, an Amended Judgment that did not address the fundamental illegality of that settlement.

Even if the Court were to find that the Tribe has not waived its tribal sovereign immunity, dismissal of the action is not proper. The Tribe has only a contingent interest from the Settlement Judgment that is conditioned on the City acting legally under California law. The petitioners would be highly prejudiced if they are barred from using their own courts and laws to ensure that the City acted legally and in compliance with the State's planning and zoning laws and its open government laws. Moreover, the Tribe's interest is more than adequately protected by its business partner Upstream which is a party to the action. The Tribe also has recourse to the City for the City's failure to legally and properly enter into a stipulated Settlement Judgment while the petitioners would not.

VI. ARGUMENT

A. The Tribe Waived Its Tribal Sovereign Immunity By Taking Actions That Expressed Its Consent To A Waiver Of That Immunity

The Tribe waived its tribal sovereign immunity when it entered into a stipulated Settlement Judgment that provides for the district court's continued jurisdiction over that judgment based on a lawsuit in which the Tribe was a plaintiff. The Tribe devotes much of its argument to contending that there must be an express waiver of tribal immunity and reciting what it asserts are applicable principles regarding tribal immunity. However,

those cases involve suits against a tribe over issues that are related directly to the actual governance or control over internal tribal matters, over tribal lands, the tribe and its own members, contracts between the a tribe and another party which are inapposite to the case at bar, or where a third party has claims regarding a tribe's own actions. Other cases the Tribe cites are cases involving sovereign immunity of the United States in the context of foreign claims. In still other cases, the Tribe sets up a straw man argument that there was no waiver of tribal sovereign immunity in claims concerning contracts with a tribe or claims that a party was a third party beneficiary of a contract. But the appellees in the case do not make any contention that they have a contract with the Tribe or with the actions of the Tribe. Their claim is with the City of Richmond failed to comply with State laws when it approved the stipulated Settlement Judgment with Upstream and the Tribe.

In this case the Tribe had engaged as a partner with a developer to develop land in Richmond, California for a casino. The Tribe's argument ignores the Supreme Court's holding in *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma,* 522 U.S. 411. In that case the Court held that while Congress must "unequivocally" express the purpose of abrogating tribal immunity, a tribe can relinquish that immunity through a clear waiver. *Id*. at p. 418. The court found that the tribe had waived its immunity with "requisite clarity" when it signed a contract for services that

required resolution of all contract-related disputes through binding arbitration between the plaintiff, C & L. and the tribe. *Id*. at p.418-419.

The Court rejected the argument that for a waiver of tribal immunity the tribe must use the words "sovereign immunity." *Id*. at p. 420. As the Eighth Circuit noted in *Val-U Construction Co. of S.D. v. Rosebud Sioux Tribe*, 146 F.3d 573, 577 (8th Cir. 1998) the waiver of immunity need not include "magic words" stating that tribal immunity is waived. *Accord*, *Warburton/Buttner v. Superior Court*, 103 Cal.App.4th 1170, 1190 (2002) ("No magic words are required, and the waiver of sovereign immunity need not mention those particular terms.")

Moreover, just as in the case of *United States v. State of Oregon*, 657 F.2d 1009, 1017 (9th Cir. 1981) the Tribe in the case at bar expressly consented to a waiver of immunity when it entered into the stipulated Settlement Judgment in which it expressly agreed that the district court retained jurisdiction over the enforcement of that agreement. In the *Oregon* case the court found that tribes had consented to such a waiver when they entered into the 1977 agreement over fishing rights after they had intervened in the underlying case between the United States and Oregon and then entered into a settlement agreement in which they agreed that the trial court retained jurisdiction to resolve disputes over fishing rights.

Likewise, in this case the Tribe's enlistment of the Court's jurisdiction is an unequivocal waiver. Paragraph 47 of the *Guidiville* judgment states that the Court "shall retain jurisdiction over this Action to enforce the terms of this Judgment. To avoid doubt, this Judgment applies to and is binding upon the Tribe…"

The Tribe thus unequivocally waived its tribal sovereign immunity to obtain that enforcement. "By seeking equity, this Tribe assumed the risk that any equitable judgment secured could be modified if warranted by changed circumstances." *United States. v. State of Oregon, supra* at p. 1015.

The Tribe claims that the case of *In re White*, 139 F.3d 1268 (9th Cir. 1998) was clarified to be narrowly applied in the later case of *In re Pegasus Gold Corp.*, 394 F.3d 1189 (9th Cir. 2005). But the *Pegasus* case said no such thing. The court in *Pegasus* examined the State's filing a proof of claim to determine their connection to the claims in bankruptcy court and found that they were not logically related to those claims. There was no clarification of Indian tribal immunity or narrowing of *White*.

In the case at bar, the Tribe consented to the district court's jurisdiction over the stipulated Settlement Judgment which included the granting of certain land use approvals and also outlined the process by which the City of Richmond had to proceed in regard to making any decisions as to those approvals.

The Tribe cites to the case of *McClendon v. United States*, 885 F.2d 627 (9th Cir. 1989,) for the proposition that it reveals the inapplicability of *United States v. Oregon*, *supra* to the case at bar. But, in fact, in footnote 2 of that case, the Court stated the following:

"Thus, United States v. Oregon must be viewed as establishing that Indian tribes may, in certain circumstances, consent to suit by participation in litigation."

Id. at p. 630. This is exactly what happened in the case at bar.

The Tribe also cites to *Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1460 (9th Cir. 1994). But that case concerned the Quileute Tribe claim against the United States and the Quinault Tribe over decisions concerning lands within the Quinault reservation. The Court held that a tribe's participation in administrative proceedings was not a waiver of immunity but that is not an issue in this case. Moreover, the Court restated the holding or the *United States v. Oregon*, *supra* that, "Thus, Oregon has been interpreted to hold that 'Indian tribes may, in certain circumstances, consent to suit by participation in litigation.'" *Id*. at p. 1459.

B. California Citizens' Constitutional Right To Self-Government In An Action To Enforce Those Rights Is Superior To The Tribe's Claim Of Tribal Sovereign Immunity.

California citizens' right to open local government is enshrined in the state constitution, Cal. Const., Art. I, §3(b), and enforced in the "Brown Act," California Government Code §§ 54950 et seq. California's Supreme Court has found such self-government rights superior to a tribe's sovereign immunity under federal constitutional principles.

Open meetings laws are such state governance rights and, balanced with the other facts here, the Court should deny the Tribe's effort to interfere with petitioners' claims through its immunity here.

"As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.* 523 U.S. 751, 754 (1998). However, a tribe's sovereign immunity "is not impenetrable and may be surrendered." *Quinault Indian Nation v. Pearson for Estate of Comenout*, 868 F.3d 1093, 1097 (9th Cir. 2017).

Thus, in *Agua Caliente Band of Cahuilla Indians v. Superior Court*, 40 Cal.4th 239, 244-245 (2006), concerning suit against a tribe for violation of the Political Reform Act, California's Supreme Court affirmed the trial court's ruling that "to apply tribal sovereign immunity from suit in this case would (1) intrude upon the state's exercise of its reserved

power under the federal Constitution's Tenth Amendment to regulate its electoral and legislative processes and (2) would interfere with the republican form of government guaranteed to the state under article IV, section 4 of the United States Constitution (sometimes referred to as the guarantee clause)."

The *Agua Caliente* court cited the interpretation of the Tenth Amendment's reservation of powers to the states in *National League of Cities v. Usery*, 426 U.S. 833 (1976) which observed the Tenth Amendment "sheltered 'the States' freedom to structure integral operations in areas of traditional governmental functions.'" *Agua Caliente Band of Cahuilla Indians v. Superior Court*, *supra* at p. 256.

California's high court further affirmed the appeal court ruling that: "This interest, the court held, outweighed the Tribe's claim to sovereign immunity from suit." *Id.* at 245. The court observed that rules or procedures required to protect constitutional rights may themselves be given "constitutional stature." *Id* at 246.

In its analysis of tribal immunity history and the state-federal interplay around it, including preemption, the *Ague Caliente Band* court noted: "The Tribe, however, fails to cite any authority that specifically states that tribal immunity from suit is a constitutional imperative. Indeed, the federal Constitution is silent regarding state action into sovereign immunity questions." *Id.* at 248–249.

In *Agua Caliente Band* the court noted tribal members, "as citizens of the United States, are allowed to participate in state elections." *Id.* at 259. Here, the Guidiville tribe's members seek to use the federal courts to force a settlement which violated California's open meeting Brown Act. The Brown Act is a state political matter within California's constitutional prerogatives.

The Tribe's peripheral role in the instant action should not allow it to squash petitioners' quest to uphold citizens' constitutional right to self-government here. Immunity should be denied.

C. Dismissal Of Petitioners' Action Would Be Improper Even Assuming The Tribe Has Tribal Sovereign Immunity

In the case at bar the trial court did not actually reach the issue of whether the Tribe was a necessary party, but made a "few observations." (ER 6) But even assuming that the Tribe has not waived its tribal sovereign immunity, dismissal of the petitioners' action would not be proper. *Stock West Corp. v. Lujan*, 982 F.2d 1389, 1398 (9th Cir. 1993) (decided under prior wording of Rule 19, but the same analysis and finding tribe was not an indispensible party even though it had not waived its tribal sovereign immunity); *See, Cachill Dehe Band of Wintun Indians v. State of California*, 536 F.3d 1034, 1041 (9th Cir. 2008) (tribes not found to be required parties) (hereinafter referred to as "*Cachill v. California*"). In actions involving public rights, such as the case at bar, the fact that a

third party may be adversely affected by the litigation is insufficient in itself to justify treating that party as an indispensable party. *Shermoen v. United States*, 982 F.2d 1313,1319 (9th Cir. 1992) (citing Moore's Federal Practice, Paragraph 19.07 at 19-100-101, 133-137 (2d ed. 1991).

The Court must consider: (1) prejudice to any party or to the absent party; (2) whether relief can be shaped to lessen prejudice; 3) whether an adequate remedy, even if not complete can be awarded without the absent party; and (4) whether there exists another adequate forum. *Stock West Corp. v. Lujan*, *supra* at p. 1398. In the case at bar those factors all support a finding that do not support dismissal of the petitioners' lawsuit.

1. The Tribe Does Not Have A Legally Protected Interest In This Case And Is Not Prejudiced

The Tribe has no legally protected interest in this case. This action is against the City as a public agency, for a violation of its ministerial public duties. Resolution of that issue does not require the Tribe as a party. Nor does the Tribe's purported interest in any *Guidiville* settlement financial payout provide a legal interest that the Tribe and its business partner, UpStream. In fact, the City,Upstream and the Tribe all claim that the Settlement Judgment grants no entitlements or rights in terms of land use and thus any claims are contingent ones. Petitioners maintain that the Settlement Judgment did illegally grant such rights.

This is an action of California citizens to enforce transparency of their local government under the Brown Act, a constitutional right. The City of Richmond's duty therefore is ministerial. As explained below, other parties' due process rights are not implicated in public body's exercise of its ministerial duties.

"A ministerial duty is one that is required to be performed in a prescribed manner under the mandate of legal authority without the exercise of discretion or judgment." *County of San Diego v. State of California*, 164 Cal.App.4th 580, 593 (2008).

"Two basic requirements are essential to the issuance of the writ: (1) A clear, present and usually ministerial duty upon the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty." *Galbiso v. Orosi Public Utility Dist.*, 182 Cal.App.4th 652, 673 (2010).

Brown Act compliance is a ministerial duty. No discretion is given local governments in its compliance. California citizens have a clear, present and beneficial, indeed constitutional, right to open government.

Since the Brown Act is such a ministerial duty, it does not create a due process issue for the Tribe. *Sustainability Parks, Recycling & Wildlife Legal Defense Fund* [SPRAWLDEF] *v. County of Solano Dept. of Resource Management*, 167 Cal.App.4th 1350, 1359 (2010) ("While procedural due process requires reasonable notice and opportunity to be heard before the government may deprive a person of a significant

property interest, only governmental decisions that are *adjudicative* in nature trigger procedural due process concerns.[Citations omitted]")

Furthermore, the Tribe's purported consequential interest in the *Guidiville* judgment is speculative. The settlement scheme is based on real estate development which has proven, over the decades, to be beset by obstacles. Open government is the least of them.

Even absent the Brown Act and other violations, the Tribe cannot demonstrate that it has valuable property rights worthy of protection. The "mere fact" that litigation "may have some financial consequences" for a non-party tribe "is not sufficient to make those tribes required parties." *Cachil v. California, supra* at p. 971 (an absent party has no legally protected interest at stake in a suit merely to enforce compliance with administrative procedures). Indeed, the Tribe maintains that it has no rights or entitlements under the stipulated Settlement Judgment that would give it a property right.

The only interest cited by the Tribe in the *Guidiville* settlement is the chance it may get some money. That interest is too remote to create a legal interest which makes the Tribe necessary here. *Id*. Moreover, while the Tribe may be affected by the public's enforcement of its rights, the Tribe has the recourse to seek any redress it may feel it is owed with the City for having failed to comply with California's open meeting laws.

2. Any Interest Of The Tribe Is Protected By Upstream Or The City

Even if a party has a legally protected interest in an action, if an existing party can adequately represent the absent party's interest, then the absent party is not required party. The Court "must further determine whether that interest will be *impaired or impeded* by the suit. Impairment may be minimized if the absent party is adequately represented in the suit." *Id.* (emphasis in original.)

A three-part test determines whether another party can represent an absent party: "(1) the interests of a present party to the suit are such that it will undoubtedly make all of the intervenor's arguments; (2) the present party is capable of and willing to make such arguments; and (3) the intervenor would not offer any necessary element to the proceedings that the other parties would neglect." *Fresno County v. Andrus*, 622 F.2d 436, 438–439 (9th Cir. 1980).

The Tribe's only claimed interest here is the *Guidiville* judgment. The *Guidiville* judgment clearly states that Upstream and the Tribe have the exact same interest in the litigation which they both brought.

The *Guidiville* judgment's preface states: "In March 2012, plaintiffs Guidiville Rancheria of California (Tribe) and Upstream Point Molate LLC (Upstream) (together, Plaintiffs) commenced the above-captioned action (Action) against defendant City of Richmond (City)." Judgment 2:1-3. (emphasis added.)

Throughout the *Guidiville* judgment, "Upstream and the Tribe" are referred to jointly until paragraph 43, a precatory acknowledgment of the Tribe's right to bring other claims against the United States or the City.

The *Guidiville* third amended complaint (ECF 91) states, at paragraph 43, that in 2004, "Tribe and Upstream agreed that Upstream act on the Tribe's behalf" to obtain the casino project approvals.[1]

Thus, the Tribe has relied upon Upstream to present its interests throughout the *Guidiville* litigation. There is no reason to believe Upstream cannot adequately assert any purported interest the Tribe may have here. Moreover, since the petitioners action is against the City, the City also can protect the interests of the Tribe in the settlement.

3. Petitioners Would Not Have An Adequate Remedy If The Action Were Dismissed And Would Be Prejudiced If The Case Were Dismissed

If the Court were to find that the Tribe had tribal sovereign immunity and that the case had to be dismissed, then the petitioners would have no adequate remedy to correct the City's violations of law and the petitioners' rights under the Brown Act for transparent decision making. They would be left with no remedy and no forum to legally contest the illegal actions of the City.

[1] The same paragraph incorrectly alleges that the LDA is formed between the City, Upstream and the Tribe. Nowhere is the LDA executed by the Tribe, nor in the 2006 First Amendment, 2008 Second Amendment or 2010 Third, Fourth, Fifth and Sixth amendments. The Tribe's LDA interest was contingent upon Upstream's success.

4. Relief Is Complete Between Petitioners And the City.

The Court should deny the Tribe's motion here because "complete" relief can be afforded between petitioners and the City without judgment against the Tribe. The Tribe is therefore not necessary.

"To be 'complete,' relief must be 'meaningful relief *as between the parties.*" *Alto v. Black,* 738 F.3d 1111, 1126. (9th Cir. 2013). (emphasis in original.) In *Alto* tribal members brought action against the federal Bureau of Indian Affairs under the Administrative Procedures Act. The court held that injunction and declaratory judgment against the BIA would complete relief between the parties and the tribe itself was not necessary to that relief.

This is an extension of the principle that the failure to join indispensable parties does not deprive a judge of the power to make a legally binding adjudication between the parties that are before the court. *Golden Rain Foundation v. Franz* (2008) 163 Cal.App.4th 1141, 1155 ("even in the absence of an 'indispensable' party, the court still has the power to render a decision as to the parties before it which will stand.")

Here, judgment for or against the petitioners will provide complete relief. Any invalidation of the City's closed-door settlement action need not enter against the Tribe. Moreover, the Tribe would have recourse against the City for having failed to comply

with the law when it illegally entered into the Settlement-Judgment. Yet, such a decision will provide complete relief to petitioners.

D. Vacatur Is Moot Given The Court's Denial Of The Tribe's Motion For Vacatur

The Tribe's brief refers to the motion for vacatur which it later filed. As this Court is aware, it denied that motion. Hence, that issue is moot in regard to this appeal. The respondents refer to their opposition to the Tribe's motion for vacatur if the court needs to consider that issue on this appeal rather than restate those arguments in this brief.

VII. CONCLUSION

The district court correctly dismissed the Tribe's motion for tribal sovereign immunity. This Court should uphold that decision.

Date: May 26, 2020

_____/s/_____
NORMAN LA FORCE
Attorney for Appellees-Petitioners
SPRAWLDEF, et. al.,

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Circuit Rule 32-1, the attached brief for appellees-petitioners SPRAWLDEF et al has been prepared using 14-point, proportionally spaced, Times New Roman typeface and it contains 5,420 words.

Date: May 26, 2020

_____/s/_____
NORMAN LAFORCE
Attorney for Appellees-Petitioners
SPRAWLDEF, et. al.,

STATEMENT OF RELATED CASE

Pursuant to Federal Rule of Appellate Procedure 28.2 appellees-petitioners SPRAWLDEF et al state they are unaware of any related cases.

Date: May 26, 2020

_____/s/_____
NORMAN LA FORCE
Attorney for Appellees-Petitioners
SPRAWLDEF, et. al.,

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, on the date below. I certify that counsel for the City of Richmond, the Guidiville Rancheria and Upstream Point Molate are registered CM/ECF users and that service will be accomplished to them by the CM/ECF system.

Date: May 26, 2020 _____/s/_____

NORMAN LA FORCE
Attorney for Appellees/Petitions
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