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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RINCON MUSHROOM
CORPORATION OF AMERICA, a
California Corporation, and MARVIN
DONIUS, a California resident,

Plaintiff,

v.

BO MAZZETTI; JOHN CURRIER;
VERNON WRIGHT; GILBERT
PARADA; STEPHANIE SPENCER;
CHARLIE KOLB; DICK
WATENPAUGH; TISHMALL TURNER;
STEVE STALLINGS; LAURIE E.
GONZALEZ; ALFONSO KOLB, SR.;
MELISSA ESTES; and RINCON BAND

Rincon Band's Reply in
Support of Motion for
Summary Judgment

Civil No. 09-CV-2330 WQH POR

**RINCON BAND'S REPLY IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: 1/6/22

Time: 1:30 pm

**NO ORAL ARGUMENT
UNLESS REQUESTED BY THE
COURT**

Judge: Hon. William Q. Hayes
Location: Courtroom 14B
Suite 1480

1 OF LUISENO INDIANS, a federally
2 recognized Indian Tribe,

333 West Broadway
San Diego, CA 92101

3 Defendants.

4 RINCON BAND OF LUISENO
5 INDIANS, a federally recognized Indian
6 Tribe,

7 Counter-Claimant,

8
9 v.

10 RINCON MUSHROOM
11 CORPORATION OF AMERICA, a
12 California Corporation; and MARVIN
13 DONIUS, a California resident,

14 Counter-Defendants

15 RINCON MUSHROOM
16 CORPORATION OF AMERICA, INC., a
17 California Corporation; and MARVIN
18 DONIUS, a California resident,

19 Third-Party Claimants,

20 v.

21 COUNTY OF SAN DIEGO, a public
22 entity; SAN DIEGO GAS & ELECTRIC,
23 a public utility, RINCON BAND OF
24 LUISENO INDIANS, a federally
25 recognized Indian Tribe,

26 Third-Party Defendants.

27
28 Rincon Band's Reply in
Support of Motion for
Summary Judgment

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1 Defendant/Counter-Claimant Rincon Band of Luiseno Indians ("Rincon
2 Band" or "Tribe"), together with Defendants Bo Mazzetti; John Currier; Vernon
3 Wright; Gilbert Parada; Stephanie Spencer; Charlie Kolb; Dick Watenpaugh;
4 Tishmall Turner; Steve Stallings; Laurie E. Gonzalez; Alfonso Kolb, Sr.; and
5 Melissa Estes (collectively referred to as "Tribal Officials"), hereby submit this
6 Reply Brief in further support of their motion (Dkt. 170) for an entry of summary
7 judgment in favor of the Tribe and the Tribal Officials on Plaintiffs/ Counter-
8 Defendants Rincon Mushroom Corporation of America's ("RMCA") and Marvin
9 Donius' ("Donius") (RMCA and Donius being collectively referred to as
10 "RMCA/Donius") claims, and Defendant/Rincon Band's counter-claim, regarding
11 the recognition and enforcement of the Amended Judgment (RTCR 8501-8517) of
12 the Tribal Trial Court regarding activities under RMCA/Donius' control on certain
13 lands (defined below as the "Subject Property") owned and controlled by Plaintiff
14 Donius. Specifically, this Reply Brief addresses the arguments and analysis set forth
15 in RMCA/Donius' "Combined Memorandum of Points and Authorities in
16 Opposition to Counterclaimant's Rincon Band of Luiseno Indians and Tribal
17 Official Defendants' Cross Motion for Summary Judgment, and In Reply to
18 Opposition to RMCA/Donius Cross Motion for Summary Judgment" (Dkt. 171,
19 hereafter referred to as "RMCA/Donius Opposition/Reply"). This Reply Brief is

made consistent with the terms of this Court's Orders of March 18, 2021 (Dkt. 155) and April 23, 2021 (Dkt. 157) regarding bifurcated proceedings in this matter.

I. INTRODUCTION

Recapping the Introduction set forth in the Rincon Band's Memorandum in Support of Motion for Summary Judgment Per FRCP 56 and In Opposition to RMCA/Donius' Motion for Summary Judgment, (Dkt. 170-1, hereafter referred to as "Tribe's MPA") to provide context for this Reply Brief, this case is about the ability of the Rincon Band to take governmental actions necessary to protect against activities being conducted on a five-acre parcel of fee land (the "Subject Property") located within the external boundaries of the Rincon Reservation (the "Reservation"), and owned by Plaintiff/ Counter-Defendant Donius, a non-Indian, in a manner that could inflict catastrophic consequences to protectable tribal interests, including economic interests. After a torturous ten-year path of litigation, winding through several lawsuits filed in tribal, state and federal courts, this case was finally heard on its merits in the Intertribal Court of Southern California (the "Tribal Trial Court"). After extensive discovery, and thirteen days of trial wherein RMCA/Donius were able to present any and all evidence, and make any and all arguments, regarding their claims and defenses, RMCA/Donius lost on the merits in the Tribal Trial Court.

The Tribal Trial Court found that the Tribe had met its burden in establishing

jurisdiction pursuant to the “second exception” set forth in *Montana v. United States*, 450 U.S. 544 (1981) and its progeny (“*Montana’s* Second Exception”). The Rincon Tribal Court of Appeals (the “Rincon Appeals Court”) then issued a unanimous Opinion on April 2, 2020 (RTCR.APP 16245-16287) authored by the Hon. James Ware and joined by the Hon. Arthur Gajarsa and Hon. Matthew Fletcher, affirming in part and reversing and remanding in part, the Tribal Trial Court Judgment. The Rincon Appeals Court affirmed (RTCR.APP 16245-16287) the Tribal Trial Court’s ruling that the Tribe had met its burden in establishing jurisdiction over the use of the Subject Property pursuant to *Montana’s* Second Exception, and affirmed that injunctive relief was appropriate, but vacated and remanded that portion of the Tribal Trial Court Judgment granting the Tribe injunctive relief as too broad, with instructions and guidance to revise the scope of the injunction provisions on remand. On June 26, 2020, the Tribal Trial Court issued an Amended Judgment (RTCR 8501-8517) to conform to the instructions of the Rincon Appeals Court. That Amended Judgment, as a matter of tribal law, is now in effect.

The overarching jurisdictional question continues to be whether RMCA/Donius steward (or fail to steward) the Subject Property in such a manner that activities on the Subject Property threaten or have some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe. At

trial, the Rincon Band met its burden to establish the factual threshold required of *Montana's* Second Exception, which in turn, establishes that the Tribe has jurisdiction over activities on the Subject Property to the extent necessary to protect against catastrophic consequences to protectable tribal interests.

Although the bulk of the RMCA/Donius Opposition/Reply is devoted to merely repeating arguments previously made, and seldom addresses or refutes the analysis set forth in the Tribe's MPA, this Reply Brief tracks the organization of the Tribe's MPA, highlighting the arguments and analysis that RMCA/Donius fail to address, and responding to those few areas where RMCA/Donius do provide further argument or analysis.

II. STATEMENT OF JURISDICTION AND STANDARD OF REVIEW

RMCA/Donius do not dispute any of the analysis set forth in the Tribe's Statement of Jurisdiction and Standard for Review in the Tribe's MPA (Dkt. 170-1 at 7-11). The RMCA/Donius Opposition/Reply (Dkt. 171 at 5-9) cites many of the same cases to acknowledge that this Court has jurisdiction to hear the Tribe's counter-claim seeking this Court's recognition and enforcement of the Tribal Trial Court's Amended Judgment under the doctrine of comity. *Coeur d'Alene Tribe v. Hawks*, 933 F.3d 1052, 1053-6 and 1060 (9th Cir. 2019). RMCA/Donius

acknowledge that this Court should review, *de novo*, only those legal questions regarding tribal jurisdiction, while the factual findings relevant to tribal jurisdiction, however, should be reviewed under a deferential, clearly erroneous, standard. The Tribe's MPA (Dkt. 170-1 at 10) points out that Appellants' Memorandum of Points and Authorities in Support of Motion for Summary Judgment (Dkt. 166, hereafter referred to as "RMCA/Donius MPA," at pp.2, 15-16) casts facts in a light favorable to RMCA/Donius without providing any argument or reason why the presentation of such evidence demonstrates that the Tribal Trial Court's findings are clearly erroneous. RMCA/Donius do not respond to that critical point, yet the same defect permeates the RMCA/Donius Opposition/Reply.

III. ARGUMENT

A. *De novo* review: The Tribal Trial Court correctly applied *Montana* and its progeny to find that the Tribe met its burden of establishing jurisdiction over activities conducted on the Subject Property.

The Tribe's MPA (Dkt. 170-1 at 11-20) sets out in substantial detail all of the Supreme Court and Ninth Circuit cases addressing the scope and applicability of *Montana's* Second Exception. The RMCA/Donius Opposition/Reply does not dispute any of that analysis, and instead repeats the analysis set forth in RMCA/Donius' original MPA (Dkt. 166 at 17-18) that there are circumstances

1 where the risk to protectable tribal interests is too speculative or too attenuated to
 2 establish jurisdiction under *Montana*'s Second Exception. But the very analysis of
 3 those same cases supports applying *Montana*'s Second Exception to the facts and
 4 circumstances present in this dispute.
 5

6 Notably, despite the very recent (June 1, 2021) Supreme Court decision,
 7 *United States v. Cooley*, 141 S. Ct. 1638 (2021), a unanimous opinion affirming and
 8 applying *Montana*'s Second Exception, RMCA/Donius repeat yet again the
 9 statement that "with only one minor exception (*Brendale v. Confederated Tribes and*
 10 *Bands of the Yakima Indian Reservation*, 492 U.S. 408 (1989)) the Supreme Court
 11 has never upheld under *Montana* the extension of tribal civil authority over non-
 12 Indians on non-Indian land" (RMCA/Donius Opposition/Reply at 10). With the
 13 recent *Cooley* decision, that statement is no longer true, and the *Cooley* Court made
 14 clear that it was improper to question the viability of *Montana*'s Second Exception:
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19 We have previously warned that the *Montana* exceptions are "limited"
 20 and "cannot be construed in a manner that would swallow the rule." *Plains Commerce Bank*, 554 U.S. at 330 (internal quotation marks
 21 omitted). But we have also repeatedly acknowledged the existence of
 22 the exceptions and preserved the possibility that "certain forms of
 23 nonmember behavior" may "sufficiently affect the tribe as to justify
 24 tribal oversight". *Id.* at 335. Given the close fit between the second
 25 exception and the circumstances here, we do not believe the warnings
 26 can control the outcome.
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Id. at 1645. *Cooley*'s recent holding and analysis, not available to the Tribal Trial Court and the Rincon Appeals Court, reaffirms that the Tribal Courts did not err in their respective statements of the law regarding *Montana*'s Second Exception.

B. The Tribal Trial Court embraced and correctly applied *Montana*'s Second Exception to the facts presented in this case, and properly concluded that the Tribe had met its burden.

1. Substantial evidence was presented to support the factual findings regarding RMCA/Donius' years-long pattern of activities.

Properly embracing *Montana* and its progeny, the Tribe's MPA at 21-24 turns to whether the Tribal Trial Court committed clear error in concluding:

Montana, within its text quotes *United States v. Wheeler*, 435 U.S. 313, stating essentially that tribes have lost many attributes of their power in relations between a tribe non-member other than to protect tribal self-government. Having this said, *Montana* goes on to make clear that the activity on the land must in fact threaten the tribe's political and economic security to justify tribal regulation over the land in question. We believe, considering all facts and circumstances in this case, this later statement to be true here.

RTCR 5009-5018, May 18, 2017 Opinion at 8. RMCA/Donius' MPA dismissed as "irrelevant" (Dkt. 166 at 57) the Rincon Appeals Court's review for clear error, which, in finding no clear error, noted:

The Tribal Trial Court found conclusively (1) that the Appellants failed to maintain their property; (2) that the Appellant' land constitutes a fire hazard in an area that is unusually threatened by fire; (3) that the Appellants' actions and inactions have contributed to a significant threat to the pristine character of the tribe's water supply; and (4) that

1 the Appellants' assertion of immunity from tribal jurisdiction, together
 2 with local government's demurrer, creates a lawless enclave within the
 3 reservation.

4 RTCR.APP 16245-16287, April 2, 2020 Opinion at 31.

5 RMCA/Donius do not dispute the Tribe's analysis that the Tribe presented at
 6 trial extensive evidence and testimony (Tribe's MPA at 21-24 with specific
 7 references to the RTCR) regarding the risk of catastrophic consequences from
 8 exacerbated fire damage, pollution of the Tribe's pristine water supply, and
 9 protection of public health and welfare. After consideration of the evidence, the
 10 Tribal Trial Court found that the Tribe had met its burden under the criteria set forth
 11 in *Montana* and its progeny. RMCA/Donius do not respond to the Tribe's MPA at
 12 24, worth repeating here, that the Rincon Appeals Court noted that RMCA/Donius
 13 concede sufficient facts to support a finding of jurisdiction under *Montana's* Second
 14 Exception:
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20 Here, RMCA/Donius' own admissions about the facts in their brief
 21 demonstrates the potential catastrophic impacts of their conduct.
 22 RMCA/Donius concede that after a massive wildfire on the reservation
 23 and beyond in 2007, "fire-damaged debris was left on the property from
 24 October 2007 until August 2008. . . . The risk-impact debris left on the
 25 subject property included ash-debris, petroleum, and ash metal."
 26 (Appellants' Brief, RTCR.APP 0327 at 12). RMCA/Donius also
 27 concede that in 2011 "the Tribe's expert engineers found a low-level
 28 diesel and motor oil plume extending from off the subject property." Id.
 In addition, RMCA/Donius concede that in 2015, the Tribe discovered
 that RMCA/Donius had engaged in unpermitted activities, including

1 “constructing mobile homes, fabricating or refurbishing wooden
 2 pallets, parking commercial trucks on the property, parking
 3 refrigeration-style trailers on the property, allowing people to live in
 4 mobile homes on the property and parking motor vehicles on the
 5 property.” Id. at 14. Finally, RMCA/Donius have conceded that each of
 6 these activities is a potential threat, but rest their defense on the claim
 7 that none of these activities have actually harmed the Tribe. However,
 8 under *Montana*, **actual harm is not the trigger for tribal jurisdiction,**
 9 **potential harm is.** Thus, we do not find RMCA/Donius’ defense
 10 credible, or consistent with the law.

11 RTCR.APP 16245-16287, April 2, 2020 Opinion at 35. (emphasis added). Rather,
 12 RMCA/Donius further try to cast some of the evidence, namely Donius’ self-
 13 serving, unsubstantiated assertions and the lack of actual contamination in the
 14 drinking water (because the polluted groundwater has yet to reach the current intake
 15 points) as clear error, without explaining why such select evidence refutes the other
 16 evidence introduced and testimony given at trial, or otherwise translates into clear
 17 error committed by the Tribal Trial Court.

18
 19 **2. RMCA/Donius’ arguments with respect to the evidence in the**
 20 **record regarding the risks to the Tribe’s protectable interests**
 21 **are unavailing.**

22 RMCA/Donius Opposition/Reply (Dkt. 171 at 27-29) repeats their contention
 23 that the Tribal Trial Court merely found that the Tribe’s allegations were “colorable
 24 or plausible,” and that the Tribe merely presented “the same evidence” it previously
 25 submitted to this Court in 2009, in support of its motion to dismiss RMCA’s lawsuit.
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(RMCA/Donius MPA at pp.2, 49-50). While asserting (Dkt. 171 at 28) that “the Tribe completely ignores the issue,” RMCA/Donius fail to address the analysis set forth in the Tribe’s MPA at 24-25 that those contentions reflect misstatements of the Tribal Trial Court’s express factual findings, based on the weight of extensive expert testimony and reports, as well as the testimony of the parties over thirteen days of trial. RMCA/Donius fail to address the Tribe’s analysis that the passage upon which RMCA/Donius rely does not conclude that the Tribe’s jurisdiction is merely colorable or plausible, but that the Tribal Trial Court “has no doubt regarding its jurisdiction” after “a complete evaluation and discussion” of *Montana* and its progeny. (Amended Judgment, RTCR 8501-8517, at p.5). Similarly, RMCA/Donius fail to address the Tribe’s analysis that in its May 18, 2017 Opinion (RTCR 5009-5018), the Tribal Trial Court reasoned that “*Montana* goes on to make clear that the activity on the land must **in fact** threaten the tribe’s political and economic security to justify tribal regulation over the land in question. We believe, considering all facts and circumstances in this case, this later statement to be true here.” (RTCR 5009-5018, May 18, 2017 Opinion at 8) (emphasis added). Moreover, as stated above, the Rincon Appeals Court noted that RMCA/Donius’ own admissions about the facts in their brief demonstrates the potential catastrophic impacts of their conduct. (RTCR.APP 16245-16287 at p.35).

1 The Tribe's MPA addresses the specific factual findings with which
 2 RMCA/Donius take issue, breaking down the activities conducted on the Subject
 3 Property into those that risk polluting the Tribe's pristine groundwater supply
 4 (Tribe's MPA at 26-34), those that exacerbate fire hazards (Tribe's MPA at 34-37),
 5 and those which constitute other threatening activities (Tribe's MPA at 37-40). The
 6 RMCA/Donius Opposition/Reply repeats their assertions regarding each factor,
 7 which remain unavailing.
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11 **a. Risks of contaminating the Tribe's pristine**
 12 **groundwater supply.**

13 The Tribe's MPA at 26-34 establishes that there is substantial evidence in the
 14 record that activities on the Subject Property threaten to pollute the pristine
 15 groundwater supply located under the Reservation and the Subject Property.
 16 Accordingly, RMCA/Donius cannot establish that the Tribal Trial Court erred in its
 17 factual findings. The Tribe's MPA points out that RMCA/Donius try to restate the
 18 factual questions to be whether the diesel plume is still occurring, and whether there
 19 is evidence of current contamination of the Tribe's drinking water (as opposed to the
 20 Tribe's groundwater, which is the source of its drinking water) (RMCA/Donius
 21 Opposition/Reply at 33-34, 45-46). RMCA/Donius do not respond to the Tribe's
 22 analysis that the question is not whether there is current contamination; rather, the
 23 question is whether RMCA/Donius' activities on the Subject Property risk such
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1 contamination. Given the pattern of prior activities and the actual presence of a toxic
2 diesel plume on the Subject Property, and excluding only a nuclear storage facility
3 as a possible activity on the Subject Property, substantial evidence exists in the
4 record that the answer to the proper question as to whether the activities on the
5 Subject Property threaten protectable tribal interests is and remains clearly “yes”.
6

7
8 RMCA/Donius do not dispute that the Tribe presented evidence and expert
9 testimony (cited with reference to the RTCR at Tribe’s MPA at 27-29) that (1)
10 activities on the Subject Property during RMCA/Donius’ stewardship caused a toxic
11 diesel plume in the Tribe’s groundwater; (2) RMCA/Donius allowed an above-
12 ground storage tank full of hazardous material to be located upon the Subject
13 Property, without the proper containment required under applicable federal, state
14 and tribal law, which storage tank exploded during a wildfire causing contamination
15 to the soil and the groundwater; (3) much of the Subject Property is bare land, not
16 sealed by asphalt or concrete, and that much of the existing asphalt and concrete is
17 cracked and broken, such that leaching is a real risk; (4) only surface material was
18 removed from the Subject Property after the wildfire, and then only in selected areas;
19 (5) the diesel fuel spill migrated off of the Subject Property in a northwesterly
20 direction; (6) in order to remedy any contamination of the underlying groundwater,
21 the Rincon Band would have to engage in remedial efforts at the location of the
22 Rincon Band’s adjacent lands nearest to the point of contamination; (7) the
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groundwater lying just outside the boundaries of the Subject Property is the Rincon Band's groundwater, and the Rincon Band will be deprived of using that resource, and will be responsible for any cleanup of that resource, if it becomes contaminated; (8) the children and grandchildren, seven generations out of the current Rincon Band's membership will be subject to that contamination, even if it does not manifest on the Rincon Band's property for many years; (9) leaching or leakage from wrecked or stored vehicles onto the bare ground of the Subject Property risks catastrophic consequences¹; (10) there is no evidence that RMCA/Donius have taken any measures to reduce the risk of of the exact same activities and the ensuing damage from happening again, or that RMCA/Donius have ever taken any measures whatsoever to that end; and (11) the drinking water on the Rincon Reservation is clean and pristine because the fragile aquifer from which the drinking water flows is clean, at least for now.

The bottom line is that there is substantial evidence that the activities in question pose a serious risk of polluting a clean water system, which is the sole source of water to the entire Rincon Reservation. RMCA/Donius' assertions that there is no evidence that the activities on the Subject Property pose real risks to the

¹ Indeed, RMCA/Donius fail to respond to the analysis in the Tribe's MPA at 28 that RMCA/Donius' own witness, Anderson Donan, testified that the leaching of leakage from wrecked or stored vehicles onto bare ground risks catastrophic consequences.

1 pristine groundwater serving the Rincon Reservation and the Tribe fail to establish
 2 clear error regarding the Tribal Trial Court's factual conclusions.

3 **b. Risks from fire hazards.**

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 5 The Tribe's MPA (Dkt 170-1 at 34-37) cites, with specificity to the record,
 6 substantial evidence that RMCA/Donius' pattern of activities on the Subject
 7 Property creates an unreasonable risk of damage from fires, including wildfires.
 8 RMCA/Donius fail to refute the expert reports of premier fire expert Douglas Allen,
 9 which conclude that the observed conditions on the Subject Property pose serious
 10 potential fire and safety hazards, which are a serious threat to the Tribe's casino and
 11 resort property, Harrah's Resort Southern California (the Tribe's Resort"), and the
 12 safety of those occupying it.
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16 RMCA/Donius do not dispute that since the initial explosion during the first
 17 fire of the above-ground diesel storage tank located upon the Subject Property, (1)
 18 new above-ground storage tanks have been located upon, and remain located upon,
 19 the Subject Property; (2) live, long electrical cords with exposed connections have
 20 been extended, and remain extended, for hundreds of feet across the Subject Property
 21 which electrical cords have been left unattended, and remain unattended, over grass
 22 and debris; and (3) abandoned, decaying trailers and recreational vehicles have been
 23 stored and continue to sit idle upon the Subject Property. The RMCA/Donius
 24 Opposition/Reply at 5 and 43, does point out that the pallet business, observed in the
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1 expert report, is no longer on the Subject Property (RMCA/Donius
2 Opposition/Reply at 5 and 43), yet such current cessation of that business does not
3 negate the fact that RMCA/Donius approved and conducted such activity without
4 regard for the fire hazards created by it, and RMCA/Donius continue to believe that
5 they would be entitled to authorize that exact same activity without regard for the
6 fire hazards created by it, yet again.
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9 The RMCA/Donius Opposition/Reply's (Dkt. 171 at 45) only response to the
10 Tribe's analysis is to try to redirect the inquiry to whether a video presented at trial
11 of an actual wildfire sweeping east to west across the Subject Property downwind to
12 the Tribe's Resort demonstrated that the fire included flying embers. Whether they
13 be described as embers, cinders or sparks, or described as flying or floating, the fact
14 remains that the area is prone to wildfires such that responsible preventive measures
15 should have been taken, were not taken, and continue not to be taken by
16 RMCA/Donius to prevent the risks of catastrophic consequences to the Tribe's
17 protectable interests.
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22 The bottom line is that there is substantial evidence that the activities
23 conducted by RMCA/Donius on the Subject Property pose a serious risk of causing
24 or enhancing catastrophic damage from fire to the Tribe's protectable interests.
25 RMCA/Donius' baseless assertions that there is no evidence regarding risks of
26 activities on the Subject Property causing, or enhancing, damage from fire to the
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1 Tribe's protectable interest fails to establish clear error regarding the Tribal Trial
 2 Court's factual conclusions.

3
 4 **c. Other activities on the Subject Property**
 5 **reinforce the Tribal Trial Court's findings.**

6 The Tribe's MPA (Dkt 170-1 at 37-40) cites, with specificity to the record,
 7 substantial evidence of RMCA/Donius' pattern of activities regarding unsanitary
 8 conditions and the scattering of cars, mobile homes and recreational vehicles, most
 9 in damaged and decaying condition, on the Subject Property. The Tribe's MPA
 10 corrects RMCA/Donius' mischaracterization of testimony by the Rincon
 11 Environmental Department's ("RED") Director, Melissa Estes, as "speculative,"
 12 noting that Ms. Estes made her conclusions as an experienced director of
 13 governmental environmental departments and a credentialed biologist.
 14 RMCA/Donius fail to respond to the Tribe's analysis that vehicles parked or stored
 15 on the Subject Property were observed to be broken and dilapidated, that much of
 16 the surface of the Subject Property is dirt, and that the portions of the surface of the
 17 Subject Property which are paved with asphalt or cement are broken, cracked and
 18 dilapidated, increasing the likelihood that contaminants will leach into to soil.
 19 RMCA/Donius fail to address that their own alleged expert, viewing the same types
 20 of activities occurring within the Rincon Reservation at another location, Rik's
 21 Garage, concluded that such activities posed the risk of catastrophic damage to the
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1 Tribe's groundwater. The RMCA/Donius Opposition/Reply fails to even address
 2 these risks, much less establish clear error regarding the Tribal Trial Court's factual
 3 conclusion that, considering all facts and circumstances, RMCA/Donius' activities
 4 in fact threaten the Tribe's political and economic security to justify tribal regulation
 5 over the Subject Property.
 6

7
 8 **d. RMCA/Donius' self-serving refutation that**
 9 **Donius has been a good steward of the Subject**
 10 **Property is unavailing.**

11 Rather than address the specific activities that form the basis of the Tribal
 12 Trial Court's factual findings, the RMCA/Donius Opposition/Reply (Dkt. 171 at 34-
 13 45) devotes eleven pages to repeat Donius' own denial of the allegations, six pages
 14 (Dkt. 171 at 35-40) of which are select portions of Donius' trial testimony, and
 15 devotes another page (Dkt. 171 at 46-47) for the proposition that Donius' "attitude"
 16 does not warrant the exercise of tribal jurisdiction over the Subject Property. This
 17 analysis is redundant and fails to establish clear error in the Tribal Trial Court's
 18 factual findings.
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22 First, this Court is encouraged to review the entirety of Donius' testimony
 23 which occurred over three trial days at the Tribal Trial Court (March 7, 2017, RTCR
 24 9561-9815, Vol.1 Part CC; March 8, 2017; RTCR 9816-10068, Vol.1 Part CC;
 25 December 18, 2018, RTCR 10540-10820, Vol.1 Part CC), rather than only the
 26 selected portions set forth in the RMCA/Donius Opposition/Reply. Even looking
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only to the selected portions of testimony identified in the RMCA/Donius Opposition/Reply, however, RMCA/Donius' analysis falls far short of establishing clear error. The selected portions of Donius' testimony are singularly focused on his allegation that the Tribe interfered with his efforts to clean up the Subject Property after the 2007 wildfire. The selected portions of Donius' testimony do not refute his two-decade pattern of improper stewardship of the Subject Property, stewardship undertaken without regard to the steps needed to protect tribal interests against the risk of catastrophic consequences. RMCA/Donius do not explain why or how the select passages of Donius' testimony establish that the Tribal Trial Court committed clear error in its factual findings, which were based on the entirety of the RTCR. Instead, Donius' testimony confirms his belief that the only restriction on what activities may occur on the Subject Property is the Marvin Donius "gut instinct" test – if Marvin Donius thinks that an activity is okay, then it's okay. Trial Testimony of Marvin Donius, March 8, 2017, RTCR 9911, Vol.1 Part CC . That testimony also confirms Donius' concession that he has no expertise in any of the multiple areas of land-use management, and that he will only categorically rule out a nuclear waste dump as a possible future use of the Subject Property, refusing to rule out any other activity. *Id.* RTCR 9910-9911, and 10011, Vol.1 Part CC.

Donius asserts that the “Tribe’s Motion papers, the Tribal Court’s ruling, the Tribal Court of Appeals Opinion all criticize Donius for ‘copping an attitude.’ ” (Dkt. 171 at 46; quotation marks and underlines in original). That phrase or the word “copping” is not used anywhere in the referenced briefs or orders. RMCA/Donius is making it up, extra punctuation and all. The Tribe does cite to several places in the record that evidence Donius’ belief that he has the ability to authorize any activity on the Subject Property, and that the only activity he would rule out is a “nuclear waste plant” (RMCA Opposition/Reply at 46). But those concessions are not used by the Tribe or the Tribal Courts to evidence that Donius is “copping an attitude.” Nor are they used to advocate that *Montana*’s Second Exception should apply because Donius has a “bad attitude.” Rather, the Tribe cites to Donius’ testimony, and the Tribal Court opinions reference Donius’ testimony, for the truth of the matter asserted - that Donius maintains that he has *carte blanche* to authorize any activity on the Subject Property, without regard to the jurisdiction of any government, without regard to any regulatory constraints, and without regard to the potential of catastrophic consequences to the Tribe’s protectable interests.” His “attitude” is irrelevant.

C. RMCA/Donius' arguments that the Tribe was motivated to render the Subject Property unmarketable are unavailing.

The Tribe's MPA (Dkt. 170-1 at 40-42) sets forth with specificity to the RTCR that the Tribal Trial Court correctly rejected RMCA/Donius' allegations that the Tribe was motivated to render the Subject Property unmarketable, except to the Tribe. The RMCA/Donius Opposition/Reply fails to respond to the Tribe's analysis in any way. The Tribal Trial Court properly concluded "none of these allegations to be true. They are unfounded and per evidence presented at trial, untrue." (RTCR 6080-6090, April 22, 2019 Judgment, at p.5).

The Tribe's MPA demonstrates that it is nonsensical for RMCA/Donius to assert that the Tribe, by going to the Tribal Trial Court in an effort to secure a court order allowing the Tribe to proceed with enforcement action, with full notice and opportunity to RMCA/Donius to be heard, and with full due process being afforded to RMCA/Donius, including the opportunity for RMCA/Donius to avail themselves of both the Tribal Trial Court and the Rincon Appeals Court and to assert a defense that the enforcement action was not warranted, somehow is "evidence" supporting RMCA/Donius' contrived conspiracy theory of the Tribe's efforts to extort a below-market sale of the Subject Property to the Tribe. What the Tribe's actions actually do evidence is the opposite of what RMCA/Donius assert: the Tribe, in taking

1 RMCA/Donius to Tribal Trial Court in 2009 and through the present, is transparent
2 regarding its intended enforcement actions, and its intent to implement the proposed
3 enforcement actions only if the independent tribunal of the Tribal Trial Court
4 approves. Such conduct hardly reflects a conspiracy on the part of the Tribe to force
5 a below-market sale of the Subject Property to the Tribe. The RMCA/Donius
6 Opposition/Reply fails to address or refute the Tribe's analysis in any manner.
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9 The Tribe's MPA establishes that RMCA/Donius' assertion that a sale of the
10 Subject Property to a third party fell through in 2006 because the prospective buyer
11 was told by the Tribe that the Tribe had jurisdiction over the Subject Property was
12 never established, and that even if true, it is correct to state that the Tribe does have
13 jurisdiction to the degree necessary to protect tribal interests, including economic
14 interests, from the risk of catastrophic consequences. The RMCA/Donius
15 Opposition/Reply fails to address or refute the Tribe's analysis in any manner.
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19 RMCA/Donius fail to establish that the Tribal Trial Court clearly erred in its
20 factual finding that the Tribe was not motivated to, and did not attempt to, render the
21 Subject Property unmarketable.
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D. This Court should grant comity to the Tribal Trial Court opinions and enforce the Amended Judgment, and should deny RMCA/Donius' efforts to void the Amended Judgment.

1. The Tribe establishes all the elements necessary for comity to be afforded to the Amended Judgment.

RMCA/Donius do not dispute the correctness of the standards set forth in the Tribe's MPA (Dkt. 170-1 at 7-11 and 42-44) for granting comity to enforce the Tribal Trial Court's opinions and orders, including recognizing and enforcing the June 26, 2020 Amended Judgment. Rather, RMCA/Donius argue that they were not afforded due process because (1) the conduct by RMCA/Donius of activities in a lawless enclave is an improper factor considered by the Tribal Trial Court (RMCA/Donius Opposition/Reply at 29-31); and (2) the 2014 amendments to Rincon Environmental Enforcement Order ("REEO") were designed to deprive RMCA/Donius of due process (RMCA/Donius Opposition/Reply at 13-29). Neither argument is availing.

a. RMCA/Donius conducting activities in a lawless enclave is a proper factor considered by the Tribal Trial Court.

RMCA/Donius contend: "[S]ince the Tribal Trial Court's finding of regulatory jurisdiction it rendered against RMCA and Donius is premised on this lawless enclave rule, instead of the rule provided under the second exception of *Montana*, supra, RMCA and Donius were denied due process of law" (RMCA/Donius MPA

1 at 39). The RMCA/Donius Opposition/Reply continues with misstatements
2 regarding the jurisdiction of San Diego County, the State of California and the
3 United States. None of these arguments explain how the Tribal Trial Court's
4 consideration of a "lawless enclave" condition at the Subject Property deprived
5 RMCA/Donius of due process. Moreover, the discussion of possible concurrent
6 jurisdiction of San Diego County or the United States does not dispute the fact that
7 RMCA/Donius have never sought County, State or EPA permits for their activities
8 on the Subject Property, have never sought to ensure that activities conducted on the
9 Subject Property were being conducted in compliance with County, State or EPA
10 regulations, and have never sought to ensure that activities on the Subject Property
11 were being conducted in accordance with any other governmental standards or
12 regulations.
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18 Although RMCA/Donius improperly assert that the lack of San Diego County
19 jurisdiction was the sole basis for the Tribal Trial Court's finding of jurisdiction, the
20 Tribe's MPA at 45-49 establishes that the Tribal Trial Court was correct to identify
21 the reality of a "lawless enclave" as a factor in concluding that the Tribe had met its
22 burden under *Montana*. The Tribal Trial Court reasoned that when there is a void of
23 non-tribal law, such as in the present case where the County of San Diego has
24 declined jurisdictional authority, to ensure that activities conducted on the Subject
25 Property do not pose a risk of catastrophic consequences, the risks of such dangerous
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1 conduct causing catastrophic consequences is heightened. Absent any entity with
2 jurisdiction to which RMCA/Donius must disclose development plans and business
3 activities, and address potential impacts, the Tribal Trial Court properly noted
4 “chaos would ensue” (May 18, 2017 Opinion, RTCR 5009-5018 at p.9). The Tribe’s
5 MPA reasoned that it follows that the threshold question of whether activities
6 actually pose a risk of catastrophic consequences is lessened where other
7 jurisdictions protect the Tribe’s interests in the absence of tribal jurisdiction.
8 Accordingly, the existence of a “lawless enclave” is a proper factor to be considered
9 in determining whether the Tribe met its burden under *Montana* and its progeny.
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13 RMCA/Donius in their Opposition/Reply do not dispute the correctness of the
14 Tribe’s analysis. Rather, they incorrectly quote and apply a passage from *FMC*
15 *Corporation* (Dkt. 171 at 30), and point to their newest and latest lawsuit, this one
16 against San Diego County alleging that the County does have jurisdiction (Dkt. 171
17 at 31-32). Neither argument is availing.
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21 First, the quoted passage from *FMC Corporation v. Shoshone-Bannock*
22 *Tribes*, 736 F.3d 916 (9th Cir. 2019) (“there is no suggestion in the *Montana* case
23 that inherent tribal authority exists only when no other government can act”), 942
24 F.3d at 935, rejected FMC Corporation’s argument that because the federal
25 government has jurisdiction over the activity, the Tribe cannot also have authority
26 under *Montana*’s Second Exception. *Id.* It is a bit startling that RMCA/Donius fail
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1 to inform the Court of the sentence immediately preceding their quoted passage,
2 which sentence reads: “Tribal jurisdiction under the second *Montana* exception may
3 exist concurrently with federal regulatory jurisdiction.” *Id.* In other words, even if
4 San Diego County exercises jurisdiction, that does not negate the Tribe’s jurisdiction
5 over the same activity. Similarly, the RMCA/Donius Opposition/Reply’s cited
6 reference to *Evans v. Shoshone-Bannock Land Use Policy Commission*, 736 F.3d
7 1298 (9th Cir. 2013) (Dkt. 171 at 30) simply rejected the Shoshone-Bannock Tribes’
8 contention that Power County lacked any concurrent jurisdiction. RMCA/Donius’
9 clarification of the cited Ninth Circuit case law supports the Tribe, not
10 RMCA/Donius. It makes it clear that even if RMCA/Donius could establish that San
11 Diego County has jurisdiction, that factor alone does not negate the presence of tribal
12 jurisdiction under *Montana*’s Second Exception.
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18 Second, even if RMCA/Donius were to prevail in their lawsuit against San
19 Diego County contending that the County does have jurisdiction (a dubious
20 proposition), such a ruling could not and does not refute the fact that San Diego
21 County did not exercise civil/regulatory jurisdiction over the Subject Property at all
22 times relevant to the dispute. The Tribe presented substantial evidence in the form
23 of four exhibits (identified and discussed in Tribe’s MPA at 47-48), making it clear
24 that San Diego County, in fact, did not exercise jurisdiction over activities on the
25 Subject Property at all times relevant to the proceedings.
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1 The Tribe's MPA at 48-49 reasons that RMCA/Donius candidly concede that
2 they believe they could conduct any activity, large or small, dangerous or not,
3 without the need for any assessment of or protection against grave and catastrophic
4 impacts to protectable tribal interests, and proceed with impunity. The Tribe is not
5 seeking to prevent RMCA/Donius from engaging in any lawful activity or
6 development of the Subject Property, it only seeks that activities be conducted in a
7 manner that does not imperil protectable tribal interests. *Montana's* Second
8 Exception affords the Tribe the jurisdiction to do so. The RMCA/Donius
9 Opposition/Reply does not respond to that analysis.
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13 The Tribe's MPA at 49 also sets out that the issue of the lawless enclave does
14 not support RMCA/Donius' contention that they were deprived of due process.
15 RMCA/Donius were afforded the opportunity to address all arguments and present
16 all evidence regarding the issue of the lawless enclave, and they did indeed submit
17 argument and evidence on the issue and its relevance in the determination of
18 jurisdiction under *Montana's* Second Exception. Moreover, RMCA/Donius had the
19 opportunity to raise the due process question with the Rincon Appeals Court (Rincon
20 Appellate Court Rules and Procedures, § 3.813(d)(2), and while they did address the
21 relevance of the issue of the lawless enclave to both the Tribal Trial Court and the
22 Rincon Appeals Court, they did not raise the argument that, as a result, they were
23 deprived of due process. Accordingly, RMCA/Donius did not avail themselves of
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1 that opportunity, depriving themselves of the very due process they contend is
 2 lacking. The RMCA/Donius Opposition/Reply does not respond to this analysis.

3 **b. Tribal Ordinances, including the Rincon**
 4 **Environmental Enforcement Ordinance, afford**
 5 **RMCA/Donius due process of law.**

6 The RMCA/Donius Opposition/Reply at 13-29 repeats the argument
 7 (RMCA/Donius MPA at pp.44-47) that tribal law, namely the Rincon Environmental
 8 Enforcement Ordinance (“REEO”), was improperly amended in 2014 in a manner
 9 that deprives RMCA/Donius of due process of law. The applicable provisions are
 10 set forth *verbatim* in the Tribe’s MPA at 50-54. The 2014 amendments to the REEO,
 11 *inter alia*: (1) make clear that the Tribe’s jurisdiction over activities on non-Indian
 12 lands within the boundaries of the Rincon Reservation is expressly limited,
 13 consistent with *ontana* and its progeny; (2) make clear that the Tribe has the burden
 14 of establishing in any enforcement action that the Tribe has jurisdiction under
 15 *Montana*’s Second Exception as applied to the specific facts and circumstances at
 16 issue; (3) provide that a non-Indian seeking to engage in activities on non-Indian
 17 land may avail himself or herself of a safe harbor, at his or her sole discretion, by
 18 submitting a comprehensive business plan to the RED for review and approval. If
 19 the non-Indian landowner submits the business plan and receives approval from the
 20 RED, the Tribe will refrain from future enforcement action for activities performed
 21 in compliance with the approved plan. No plan, however, is required. No

1 submission, however, is required. If no plan is submitted and approved, the RED
 2 must make an administrative written determination, prior to taking any enforcement
 3 action, that the facts and circumstances establish jurisdiction under *Montana*. The
 4 2014 amendments make clear that aggrieved parties to any enforcement action may
 5 avail themselves of judicial remedies in Tribal Trial Court and in such proceedings,
 6 the Tribe has the burden of establishing jurisdiction, These amendments are all and
 7 each friendly to the non-Indian landowner. RMCA/Donius wrongly argue otherwise.
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 10 RMCA/Donius largely ignore the comprehensive analysis set forth in the
 11 Tribe's MPA at 50-57. Rather, RMCA/Donius argue: (1) that the 2014 Amendments
 12 somehow deprive them of due process by using the qualifier "potential" when
 13 referring to the catastrophic consequences needed to establish jurisdiction under
 14 *Montana's* Second Exception (RMCA/Donius Opposition/Reply at 13-24); (2) that
 15 the 2014 Amendments compel RMCA/Donius to submit a business plan to the RED
 16 and have that plan approved by the RED (RMCA/Donius Opposition/Reply at 24-
 17 25); and (3) that the 2014 Amendments shifted the burden away from the Tribe and
 18 onto RMCA/Donius to establish that *Montana's* Second Exception does not apply
 19 (RMCA/Donius Opposition/Reply at 25-29). All three arguments are unavailing.
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22 First, the RMCA/Donius Opposition/Reply fails to explain how the use of the
 23 word "potential" is inconsistent with *Montana* and its progeny's use of the word
 24 "threaten," or how its application deprives RMCA/Donius of any due process.
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Moreover, RMCA/Donius fail to demonstrate that there is any material difference between using the qualifier word “threat” of catastrophic consequences and the qualifier word “potential” of catastrophic consequences. The American Heritage Dictionary, 5th edit. (2016), defines “threat” as “one that is regarded as a possible source of harm or danger”. It defines “risk” as “the possibility of suffering harm or loss.” It defines “potential” as “capable of being, but not yet in existence.” RMCA/Donius fail to explain in any meaningful way how the plain meaning and use of the word “potential” in the REEO improperly reflects *Montana*’s Second Exception. The RMCA/Donius Opposition/Reply (Dkt. 171 at 17) even stoops to the use of improper english grammar arguing that the Tribe must establish that RMCA/Donius’ activitiy “in fact poses a catastrophic risk” as opposed to establishing that the activity “potentially poses a catastrophic risk.” As used here, “potentially poses” is ridiculously redundant.

Moreover, the federal courts in *Montana*’s progeny have often used the same word, “potential,” to describe the “threat” of catastrophic consequences. *See, e.g., Grand Canyon Sidewalk Development LLC v. ‘Sa ‘Nyu Wa Inc.*, 715 F3d 1196, 1206 (9th Cir. 2013); *Burlington Northern Santa Fe R.R. v. Assiniboin and Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767, 774 (9th Cir. 2003); *Montana v. E.P.A.*, 137 F.3d 1135, 1141 (9th Cir. 1998); *Babbitt Ford v. Navajo Indian Tribe*, 710 F.2d 587,

593 (9th Cir. 1983); *Glacial Electrical Cooperative v. Gervais*, 2015 WL 13650531 at *4 (D. Mont. 2015). The RMCA/Donius Opposition/Reply at 18-21, even disputes that these cases use the word “potential”, and when doing so, are referring to something other than the threat of catastrophic consequences. These do in fact use the word “potential”, and they are not referring to anything other than the catastrophic consequences that justify the application of *Montana*’s Second Exception.

No amount of semantics or sophistry engaged in by RMCA/Donius changes the reality that the 2014 amendments to the REEO properly reflect that the Tribe’s jurisdiction over non-Indian activities on non-Indian lands within the external boundaries of the Rincon Reservation is consistent with and limited by *Montana* and its progeny. The suggestion that the REEO’s requirement that the Tribe establish that the activities in question have the potential for causing catastrophic consequences to the Tribe’s protectable interests somehow deprives RMCA/Donius of due process is without merit.

Second, contrary to RMCA/Donius’ repeated assertions, the REEO does not require RMCA/Donius to submit a business plan and have it approved before they may commence any activity or development on the Subject Property. The Tribe’s MPA at 55 makes it clear that the REEO provides an opportunity or “safe harbor”, available entirely at RMCA/Donius’ discretion, to avail themselves of the option to

1 submit a proposed business plan that, if approved by the RED, avoids the risk of
2 enforcement action by the Tribe. REEO § 8.313(a). If RMCA/Donius choose not to
3 submit a business plan, the REEO requires the RED to first make its written finding
4 on jurisdiction before it may proceed with the issuance of a Notice of Violation
5 (“NOV”) or other enforcement action. REEO § 8.313(b)(2). The Tribe’s MPA at 55-
6 56 makes it clear that although tribal ordinances in effect prior to 2012 did require
7 tribal approval of plans for business activities without regard to the fee status of the
8 land, as a matter of federal law, those ordinances were applicable only in
9 circumstances where the activities on the non-Indian land owned in fee status
10 threatened catastrophic consequences to protectable tribal interests. The
11 RMCA/Donius Opposition/Reply simply repeats their arguments, even though there
12 is no dispute that the 2014 amendments to the REEO were in effect when the RED
13 took action to issue the September 24, 2015 NOV, and when the RED rejected
14 RMCA/Donius’ proposed business plan in the fall of 2015.

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16 The RMCA/Donius Opposition/Reply at 25 asserts that the 2014 amendments
17 allow the Tribe to take enforcement action simply because a plan is not submitted.
18 That is simply wrong. The REEO requires that: “[P]rior to taking enforcement action
19 . . . the RED must make a specific written determination that the conduct qualifies
20 under the scope of the RED’s enforcement authority as set forth in Section 8.301,
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1 including the facts relied upon and the rationale for such determination.” Only after
2 such a written determination is made, and only after the impacted party fails to
3 comply with the NOV, may the Tribe then file an action in Tribal Trial Court to seek
4 enforcement of the NOV. Moreover, the 2014 REEO requires the RED to establish
5 the correctness of its written determination in Tribal Trial Court.
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8 Third, the RMCA/Donius Opposition/Reply asserts that the 2014
9 Amendments shift the burden, requiring that RMCA/Donius prove *Montana’s*
10 Second Exception does not apply. That accusation is wholly without merit. The
11 REEO puts the burden on the RED to establish to the Tribal Trial Court that the
12 RED’s written determination is correct. The opinions and orders of the Tribal Trial
13 Court and the Rincon Appeals Court in this matter both acknowledge that the burden
14 is on the Tribe and conclude that the Tribe met its burden. The RMCA/Donius
15 Opposition/Reply at 25-27 argues that use of the word “potential” and the (untrue)
16 requirement of a business plan have “shifted” the burden. That analysis is a non-
17 sequitor and as discussed above, wrong.
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E. RMCA/Donius’ challenges to the scope of the injunctive relief in the Amended Judgment are out of order and without merit.

The RMCA/Donius Opposition/Reply at 47-48 continues to contend that the scope of the injunctive relief set forth in the Amended Judgment is overly broad (RMCA/Donius MPA at pp.52-57). The Tribe’s MPA at 58-59 establishes that the issue is not properly before this Court because RMCA/Donius failed to appeal the Amended Judgment to the Rincon Appeals Court, and have not sought relief from the Tribal Trial Court to modify the injunction. RMCA/Donius fail to respond to that analysis. Rather, the RMCA/Donius Opposition/Reply at 48 repeats the argument that requiring RMCA/Donius to comply with various laws and regulations of the County, State or United States regarding activities conducted on the Subject Property where tribal law is silent is unfair because “RMCA/Donius would have to guess what those laws might be.” The Tribe’s MPA at 58 notes that the Amended Judgment merely requires RMCA/Donius to be aware of and comply with the very same exact laws that would apply if the Subject Property were a mere mile north of its location, but outside of the external boundaries of the Rincon Reservation. RMCA/Donius do not respond to that analysis. There is no guessing involved.

F. The Order awarding the Tribe \$1.7 million in fees and costs should be recognized and enforced.

The RMCA/Donius Opposition /Reply at 48-49 asserts that the award of costs and fees should not be recognized or enforced because the 2014 amendments to the REEO are defective. It appears that RMCA/Donius are referring to the arguments previously made and addressed above regarding the REEO. RMCA/Donius do not identify any defect in the REEO specific to the award of costs and fees, or otherwise provide any legal argument that the award is deficient or defective. Accordingly, this Court's recognition and enforcement of the Tribal Court Orders in this matter should include the award of costs and fees.

IV. Conclusion

The briefing in this matter establishes that the Tribal Trial Court afforded effective due process to RMCA/Donius, despite their defiance of the Tribe's jurisdiction, and after an extensive trial, properly found that the Rincon Band had met its burden of establishing jurisdiction over RMCA/Donius' activities on the Subject Property pursuant to *Montana's* Second Exception. No error of law, and no

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1 clear error of fact, occurred. Accordingly, summary judgment should be entered in
2 the Tribe's favor on all counts of RMCA/Donius' Complaint and on the Tribe's
3 Counterclaim.
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5 Date: October 20, 2021
6

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CERTIFICATE OF SERVICE

I, Scott Crowell, hereby certify that Rincon Band's Reply in Support of Motion for Summary Judgment was filed through the ECF System and therefore copies will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF):

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As of today there are no non-registered participants identified on the Notice of Electronic Filing (NEF) Manual Mailing Notice List requiring paper copies to be mailed.

Dated: October 20, 2021

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