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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PECHANGA BAND OF INDIANS, Plaintiff, v. ROBERT F. KENNEDY, JR., *et al.*, Defendants.	No. 5:25-CV-03605-JGB-SP **REPLY MEMORANDUM IN SUPPORT OF MOTION FOR IMMEDIATE INJUNCTIVE RELIEF** Date: April 27, 2026 Time: 9:00 a.m. Ctrm: Courtroom 1, 2nd Floor Honorable Jesus G. Bernal

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ARGUMENT

I. IHS MISCHARACTERIZES THE ISDA IN MULTIPLE WAYS.

The government's opposition brief reflects the Indian Health Service's hostility both to the Pechanga Band of Indians and to the core principles of tribal self-determination reflected in the Indian Self-Determination Act (ISDA). But that hostility cannot eclipse the basic principles and undisputed facts that inform this case. IHS may not violate the ISDA simply because it dislikes the statute.

First, IHS possesses *no* discretion whatsoever to refuse tribal contracting proposals outside § 5387(c)(1)(A)'s four specified "rejection" criteria.[1] To the contrary,

> Congress has clearly expressed in the ISDA both its intent to circumscribe as tightly as possible the discretion of the Secretary, *see* ISDA § [5328(a)] (prohibiting the Secretary from promulgating any regulation or imposing any nonregulatory requirement, except for regulations pertaining to sixteen carefully delineated topics not relevant here), and its intent to make available judicial review of all agency action, *see id*. § [5331(a)].

Ramah Navajo Sch. Bd., Inc. v. Babbitt, 87 F.3d 1338, 1344 (D.C. Cir. 1996).[2]

Second, *all* IHS actions involving the ISDA are judicially reviewable, including even agency funding decisions typically beyond judicial review in other settings. *Id*. For these twin reasons, IHS is patently wrong in asserting that its "refusal to agree to the scope of services at issue is not mandatory or reviewable,"

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[1] All code citations are to Title 25 of the United States Code.

[2] IHS chafes at the idea that it could be compelled to enter a "unilateral contract," Defs.' Opp'n Pl.'s Mot. Prelim. Inj., at 1 [hereinafter Opp'n], but that is precisely what the ISDA contemplates if IHS refuses to comply with the Act. The ISDA provides *tribes* the choice to propose a compact and make a final offer if needed, and it provides that a tribe's proposal is "deemed approved" if the Secretary does not issue a timely rejection that "clearly demonstrates" that one of the limited rejection criteria is met. § 5387(b)-(c).

1 and that "any challenge to that decision falls outside of the ambit of the ISD[A]
2 and its limited waiver of sovereign immunity." Opp'n at 15. If IHS could evade
3 judicial review by unilaterally labeling a tribe's compact proposal "beyond the
4 bounds of the ISD[A]," *id.*, it would render the judicial review provision
5 meaningless. Indeed, Congress added "strong remedies" in § 5331 precisely to put
6 the brakes on such attempts by IHS to evade its clear obligations under the Act. S.
7 Rep. No. 100-274, at 37 (1987).[3]

8 Third, IHS may not impose "threshold" criteria in reviewing an ISDA
9 contract or compact. *See* Opp'n at 5. Congress expressly contemplated and *barred*
10 consideration of such issues and instead created declination and rejection processes
11 with specific, limited criteria for turning down a tribe's proposal—indeed, this was
12 the whole point of specifying those processes (and the accompanying appeal
13 procedures) in the amended Act. S. Rep. No. 100-274, at 24 (1987);[4] *id.* at 26;[5] S.
14 Rep. No. 103-374, at 5 (1994).[6]

15

16 [3] "The amendments made by [§ 5331] are necessary to give self-determination
17 contractors viable remedies for compelling . . . IHS compliance with the [ISDA].
The strong remedies provided in these amendments are required because of [IHS's]
18 consistent failures over the past decade to administer self-determination contracts
in conformity with the law."

19 [4] "The current practice of Federal agencies that impose 'threshold criteria' on a
20 self-determination contract application is clearly inconsistent with the intent of the
[ISDA]. Furthermore, it is contrary to the intent of the [ISDA] for a Federal agency
21 simply to fail to enter into a contract without providing to the tribal organization a
22 formal notice of declination that states the grounds for declination and provides an
23 opportunity and procedures for an appeal hearing within sixty days of receipt of a
proposal to contract."

24 [5] "As discussed above, 'threshold criteria' are not authorized by the [ISDA]."

25 [6] "[The 1994 Amendment] clarifies that the Secretary's determinations regarding
26 whether a contract proposal is authorized by the Act (the issue known as
'contractibility'), and regarding contract funding levels are issues which must be
27 assessed as part of the declination contract review, approval and appeal process set

Fourth, despite IHS's expressed hostility to tribes serving non-Indian patients on a fee for service basis under an ISDA contract or compact, Congress in the Indian Health Care Improvement Act (IHCIA) vested tribes with precisely that authority.[7] § 1680c(c)(2). Tribes throughout the country often expand services in this manner because, as Pechanga anticipates here, a larger patient base permits the tribe to provide more robust services to its own citizens. Although IHS criticizes the provision of services to non-Indians because that is not IHS's core mission, Congress has made clear that both IHS and tribes can choose to provide such services. *See generally Jamestown S'Klallam Tribe v. Azar*, 486 F. Supp. 3d 83 (D.D.C. 2020) (IHS not challenging base funding for tribal program involving 3% Indian patients and 97% non-Indian patients).

Fifth, payments received when providing health care services under an ISDA contract or compact (including revenues earned from serving non-Indian patients) must, by law, be spent to provide further services under that same contract—they are not profits that can be pocketed by a tribe. *See* § 1641(d)(2)(A);[8] *see also*

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forth in section 102(a)(2) of the Act (that is, these issues may not be identified as part of some 'threshold' assessment, nor in any other way that would escape the critical procedural protections available under section 102)."

[7] "In the case of health facilities operated under a contract or compact entered into under the [ISDA], the governing body of the Indian tribe . . . providing health services under such contract or compact is authorized to determine whether health services should be provided under such contract or compact to individuals who are not eligible for such health services under any other subsection of this section or under any other provision of law. . . . Any services provided by the Indian tribe . . . pursuant to a determination made under this subparagraph shall be deemed to be provided under the agreement entered into by the Indian tribe or tribal organization under the [ISDA]." *See also* § 1680c(c)(3)(A) (ineligible non-Indian patients "shall be liable for payment" of health services received from a tribal facility).

[8] "[A]ll amounts so reimbursed shall be used by the tribal health program for the purpose of making any improvements in facilities of the tribal health program that may be necessary to achieve or maintain compliance with the conditions and

§ 5388(j).[9] IHS's suggestion that Pechanga proposes to profit from these services is as offensive as it is wrong. [10]

Sixth, this case involves only a portion of *Pechanga's own share* of IHS funding—$12,644—and the execution of a compact and funding agreement transferring that funding from Riverside to Pechanga. The proposed compact does not permit this IHS funding to be spent on providing care to ineligible non-Indians. Nor does it open other "floodgates of ISDEAA benefits" such as "contract support costs." *See* Opp'n at 24. As IHS well knows (but did not share), IHS does not pay "contract support costs" to support the delivery of health care to non-Indians.[11] And a central case IHS cites held that IHS is also *not* required to award a lease to a tribe under § 5324(*l*) to the extent the leased facility serves non-Indians. *See* Opp'n

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requirements applicable generally to such items and services under the program under such title and to provide additional health care services, improvements in health care facilities and tribal health programs, any health care-related purpose (including coverage for a service or service within a contract health service delivery area or any portion of a contract health service delivery area that would otherwise be provided as a contract health service), or otherwise to achieve the objectives provided in section 1602 of [the IHCIA]."

[9] "All Medicare, Medicaid, or other program income earned by an Indian tribe shall be treated as supplemental funding to that negotiated in the funding agreement. The Indian tribe may retain all such income and expend such funds in the current year or in future years except to the extent that the [IHCIA] . . . provides otherwise for Medicare and Medicaid receipts.."

[10] The Tribe's ability to bill at the "all-inclusive rate" reflects the judgment by California and the federal Centers for Medicare & Medicaid Services that tribal ISDA programs may bill at this rate to encourage providing care to underserved Medicaid patients. It is not some sort of money-making scheme, as IHS suggests, *see* Opp'n at 10 & n.1, and it bears no relation to the statutory rejection criteria.

[11] U.S. Dep't of Health & Hum. Servs., Indian Health Serv. Guidance for Contract Support Costs on Expenditures of Third-Party Reimbursements at 2, available at https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2024_Letters/Enclosure1_DTLL_12202024.pdf (Item 6).

at 18 (citing *Jamestown*, 486 F. Supp. 3d at 89-90).

IHS is doubly wrong in alleging that Pechanga's proposed compact would "unilaterally reduce Riverside's funding," which, in IHS's view, is "legally prohibited." Opp'n at 22. IHS ignores evidence already in the record—and submitted to IHS during negotiations—that Riverside *supports* the proposed compact. *See* Dkt. No. 58-4 at 6-7 (Riverside letter). Moreover, because Pechanga is strictly withdrawing only its *own* funds from an intertribal consortium—an action it has an absolute right to take at any time under § 5386(g)—the ISDA provisions addressing the reduction of one tribe's funding to serve a *different* tribe are entirely inapplicable. *See* Opp'n at 4, 22 (citing, inter alia, §§ 5325(b), 5388(d)).[12]

At the core of this dispute is the Tribe's right to reallocate $12,644 of its own funds toward improved services for Pechanga members that will cost far in excess of this amount. If this litigation is successful, a final injunction would require IHS to deobligate $12,644 from Riverside's compact—a reduction Riverside has already consented to—and reobligate those funds to Pechanga's compact. In the context of a preliminary injunction, however, it is sufficient for the Court to order IHS to award and fund the compact only in monthly increments until the conclusion of the case. (A revised proposed Order accompanies this filing.) In granting plaintiffs preliminary relief, other courts have funded ISDA agreements in precisely this manner. *See, e.g.*, *Navajo Health Found.-Sage Mem'l Hosp., Inc. v. Burwell*, 100 F. Supp. 3d 1122, 1192 (D.N.M. 2015) (granting preliminary

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[12] For the same reason, the fact that "IHS is obligated by law to protect existing contracts," *see* Opp'n at 17 (citing *Pit River Health Serv., Inc. v. Indian Health Serv.*, DAB CR333, 1994 WL 596859, at *13 (H.H.S. Sept. 12, 1994)), cannot prohibit Pechanga from withdrawing its own funds from an existing compact that Riverside has entered into *on Pechanga's behalf*.

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injunction and requiring interim contract funding). Contrary to IHS's suggestion, nothing in such an injunction is irreversible or unworkable, and if the Court ultimately resolves the case in IHS's favor, the injunction can be dissolved and the month-to-month compact terminated.

Although IHS's additional arguments are addressed below, as best Pechanga can tell, IHS would not object to Pechanga's proposal if the Tribe did not plan to serve both Indian and non-Indian patients. But the Tribe's right to serve non-Indians is a statutory right that IHS cannot abrogate through the rejection process. *See* § 1680c(c)(2). Indeed, the decision to serve non-Indians pursuant to an ISDA compact rests entirely with the respective tribe. *Id.*[13] Pechanga is not aware of any prior instance where IHS has interfered with this right, and the *Jamestown* case is a classic example of a tribe serving non-Indians (there, *97%* of the patients) to boost the quality of services available to Indians, 486 F. Supp. 3d at 84. This situation is common in California. Given that IHS routinely approves compacts and funding agreements under which tribes also serve non-Indians pursuant to § 1680c(c)(2), it is difficult to see how IHS can sustain a rejection simply because the proposed funding agreement states that fact and explains how the Tribe intends to provide those services. Yet that is the distinction upon which IHS rests its rejection here.

II. IHS CANNOT EVADE THE STATUTORY INJUNCTION PROVISIONS OF THE ISDA.

IHS tries to dodge § 5331(a)'s mandatory injunction provision, first by arguing that this case does not arise under the ISDA. That proposition simply cannot be sustained under the ISDA's plain meaning and legislative history, *see supra* at 1-2, all the more so given Congress's direction that every provision of the

[13] Once a tribe has made the decision to serve non-Indians, those services are "deemed to be provided under" the tribe's compact without needing IHS approval. § 1680c(c)(2). Non-Indian care need not be expressly addressed in the compact.

ISDA must be liberally construed in favor of the tribe. Dkt. No. 58 at 14 (citing statutes). On its face, IHS's reading is not "clearly required by the statutory language." *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 194 (2012).

IHS also tries to dodge § 5331(a) by switching the field of play to Rule 65 mandatory injunctions which alter the status quo and are issued under a court's equitable power. Opp'n at 12-14. IHS never disputes (and therefore concedes) that if this case indeed arises under the statutory mandatory injunction provision of §§ 5331(a) and 5391(a)—precisely as Congress *expressly* intended in the case of a "declination" or "rejection"—then Rule 65's caselaw concerning standards of proof and balancing of harms do not apply. On this score, IHS cites no authority contrary to the cases cited in the Tribe's Motion, Dkt. No. 58 at 19-20, including the Ninth Circuit's clear rule that "[t]he traditional requirements for equitable relief need not be satisfied" where the applicable statute "expressly authorizes the issuance of an injunction," *United States v. Est. Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000); *see also, e.g.*, *Kwon v. Sung-Eun Corp.*, No. SACV 20-01834-CJC (KESx), 2021 WL 3193225, at *3 (C.D. Cal. Feb. 9, 2021). IHS's reliance on *Weinberger v. Romero-Barcelo* is misplaced, as that case did not turn on the use of the word "may" in the injunction provision, nor did it discuss whether courts must apply the equitable factors in order to issue a statutory injunction. 456 U.S. 305, 314-15 (1982); *see* Opp'n at 16.[14] Worse for IHS, if § 5331(a) merely restates what courts already have the power to do, it would be a nullity. *Cf. United States v. Atl.*

[14] At most, *Weinberger* stands for the proposition that if a statutory violation is merely a technicality and does not violate the *purpose* of the statute, a court has discretion to craft an appropriate remedy. 456 U.S. at 314-15. *Weinberger* specifically contrasted the situation in *TVA v. Hill*, where refusal to order an injunction would have yielded a result that "ignored the 'explicit provisions of'" the applicable statute, and therefore an injunction was appropriate. *Id.* (quoting *TVA v. Hill*, 437 U.S. 153, 173 (1978)). That is precisely the case here.

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Rsch. Corp., 551 U.S. 128, 136-37 (2007) (explaining courts should avoid a statutory interpretation that "threatens to render [an] entire provision a nullity").

Section 5331(a) plainly applies in this case, and it permits the issuance of mandatory injunctions for precisely the type of circumstances presented here.

III. AN IHS OPIOID PROGRAM SERVING INDIAN PEOPLE IS A PROGRAM SERVING INDIANS WITHIN ISDA'S SCOPE.

IHS mischaracterizes Pechanga's proposal as a proposal to serve *non*-Indians, where Indian beneficiaries are merely "collateral." Opp'n at 6, 18. In fact, Pechanga seeks to operate an *Indian* opioid treatment facility, which IHS and other tribes routinely operate.[15] IHS does not and cannot dispute that an IHS opioid treatment program serving Indians is a contractable program under § 5385(b)(1)-(2). The Tribe seeks the small sum of $12,644 to do so, in an effort to minimize its impact on Riverside and after conferring with IHS's Area Lead Negotiator who confirmed that this amount would be acceptable. Compl. ¶ 76. Obviously that amount alone is insufficient to stand up a robust program for any Indian population, which is why the Tribe stated its intent to generate additional revenues by serving non-Indians (as is its statutory right) and use the proceeds to offer more services to Indian people than could be provided with IHS dollars alone. Extending care to non-Indians does not change the character of the 'Indian' funds the Tribe is actually withdrawing from Riverside, or the program it is taking over from IHS.

[15] IHS offers no evidence to support its speculation that the proposed facility will not serve a material number of Pechanga members. Opp'n at 17-18. Nothing in the ISDA gives IHS the right to second-guess the Tribal Council's determination that this facility is needed for the Tribe's members, nor is the level of need a criterion on which IHS may base a rejection. *See* § 5387(c). In any event, the Tribe provided extensive evidence on the need among Pechanga members and other Indians in the region. Dkt. No. 58-4 at 9-79. Riverside also agreed with Pechanga regarding the need for these new services, and has expressly confirmed that IHS never bothered to ask Riverside about actual patient demand. Thomsen Decl. ¶¶ 9-13.

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IHS's cases are inapposite. IHS cites two cases in which tribes sought to operate federal programs benefiting the general public, namely the DHHS Temporary Assistance for Needy Families Program in *Navajo Nation v. Department of Health & Human Services*, 325 F.3d 1133 (9th Cir. 2003), and a Bureau of Reclamation fisheries restoration project in *Hoopa Valley Indian Tribe v. Ryan*, 415 F.3d 986, 991 (9th Cir. 2005). Neither involved a program operated by IHS or its sister agency the Bureau of Indian Affairs—agencies established by Congress to serve Indian people. Here, by contrast, the Tribe seeks to compact for *IHS funds* already allocated to the Tribe (through Riverside) for the provision of healthcare to Indian people. The Tribe seeks to use those funds for opioid treatment services that are indisputably contractible—and their contractibility is not impacted by the Tribe's decision to *also* serve non-Indians on a fee-for-service basis under § 1680c(c).

IV. OTHER IHS TRIBAL CONTRACTORS PROVIDE SERVICES IDENTICAL TO THOSE PECHANGA PROPOSED.

IHS asserts no one at IHS was aware that other California tribal contractors providing opioid treatment services do so by employing the services of OneTogether Solutions (OneTogether). Opp'n at 10.[16] Whether such tribal contractors use OneTogether, other companies, or in-house resources is irrelevant to the propriety of such arrangements under the ISDA and § 1680c(c).[17] A tribe's decision to contract for technical expertise in running a program is not a valid basis

[16] In fact, IHS officials were aware of OneTogether's role in other ISDA programs when those programs were approved and later renewed. Sooter Decl. ¶¶ 18-19.

[17] The agreement between OneTogether and Pechanga allows the Tribe to benefit from OneTogether's expertise in establishing and operating an opioid treatment program while ensuring the Tribe retains full control over the program and its employees. Sooter Decl. ¶¶ 5-6, 16-17.

for rejecting a compact, as IHS seems to have recognized when it approved multiple other programs using an identical model. *See* Sooter Decl. ¶¶ 18-19. Indeed, the entire purpose of the ISDA, and in particular Title V, is to allow tribes to determine how to design and deliver services to better meet their communities' needs. Similarly, a tribe's decision to exercise its statutory right to serve non-Indians under § 1680c(c) cannot possibly be a valid basis for rejecting a compact. And many tribes nationwide *do* serve non-Indian patients under § 1680c(c).

IHS conceded as much in the most recent reported case involving non-Indian services, where IHS never argued that the contract or the dual-service delivery system were illegal or outside ISDA's scope. *Jamestown*, 486 F. Supp. 3d at 86. And here, IHS *encouraged* Pechanga to adopt a resolution authorizing the Tribe to serve non-beneficiaries, provided template language, and conveyed that it had "no comments or concerns" with the final resolution. Compl. ¶¶ 64-65, 72-74. In short, both law and settled IHS practice make untenable the assertion that Pechanga's proposal falls outside the scope of the ISDA, as supplemented with § 1680c(c).

V. AN INJUNCTION IS WARRANTED.

For all the reasons set out above, Pechanga is entitled to immediate injunctive relief pursuant to § 5331(a).

Injunctive relief is also appropriate under the equitable standards encompassed in Rule 65. First, the Tribe has demonstrated that it is facing irreparable harm as long as IHS refuses to enter into the proposed compact that would allow the Tribe to open the proposed treatment facility using the benefits Congress conferred in the ISDA. Unable to contest the evidence that Pechanga's members desperately need these services, *see* Macarro Decl. ¶¶ 11-17, IHS's primary argument is that Pechanga's members can receive services "elsewhere." Opp'n at 19. But telling a tribe it should send its members elsewhere rather than operate its own program is antithetical to the self-determination principles

1 embodied in ISDA. Moreover, sending Pechanga's members "elsewhere" is
2 equivalent to leaving them without practicably accessible services. Riverside does
3 not offer the level of services that Pechanga will provide, *see* Compl. ¶ 45, and
4 Riverside itself supports Pechanga's efforts "to make these critical services
5 available," Dkt. No. 58-4 at 6-7; Thomsen Decl. ¶ 10; LeBeau Decl. ¶ 5. The other
6 two tribal opioid programs IHS references are indeed similar to Pechanga's
7 proposed program—both serve Indians and non-Indians, and both contract with
8 OneTogether—but they are not within a reasonable driving distance from the area
9 Pechanga will serve. Sooter Decl. ¶ 8. IHS never asked Riverside whether Indian
10 patients have access to other tribal providers, Thomsen Decl. ¶ 11, and offers no
11 support for its assertion that other tribal providers are available.

12 Pechanga's ongoing harm is not diminished by the timing of its motion, as
13 IHS contends. Pechanga waited several months to file suit only because the Tribe
14 continued discussions with IHS in an effort to *avoid* litigation. Compl. ¶¶ 143-52;
15 *see, e.g.*, *Guess?, Inc. v. Tres Hermanos*, 993 F. Supp. 1277, 1286 (C.D. Cal. 1997)
16 (finding one-year delay before filing suit reasonable because plaintiffs were
17 actively trying to resolve the issue out of court). The Tribe filed suit only when it
18 became clear those efforts would not bear fruit. It then filed the instant motion for
19 injunctive relief while the litigation was still in very preliminary stages; IHS has
20 not yet filed an Answer, and it has alleged no prejudice arising from the timing of
21 the Tribe's motion. Moreover, the timing of a preliminary injunction motion "is
22 merely one of several factors to consider" when courts evaluate irreparable harm.
23 *Cordelia Lighting, Inc. v. Zhejiang Yankon Grp. Co.*, No. EDCV 14-881 JGB
24 (SPx), 2015 WL 12656241, at *9-10 (C.D. Cal. Apr. 27, 2015) (citing *Arc of Calif.*
25 *v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014)). "The Ninth Circuit has explained
26 that 'courts are loath to withhold relief solely on that ground,'" especially when the
27 plaintiff's "injury is ongoing," as it is here. *See id.* (citation modified).
28

On the other side of the scale, IHS has identified no harm that it would face from the issuance of an injunction. To the extent that entering into an irreversible compact could cause harm if the Court later determines it was mistaken in issuing an injunction, that harm is eliminated by providing for the tailored month-to-month payment described above. Even the term of the compact can be tailored to be month to month. Although IHS tries to skew the perception of the equities by suggesting that the Tribe is a victim of its own choices and could have simply not built the clinic, the Tribe made these choices in direct reliance on *IHS*'s representations that the compact would soon be approved. Compl. ¶¶ 79, 83-84. IHS must now make good on those assurances.

Finally, the Court should reject IHS's hyperbolic arguments as to why Pechanga should be required to post a bond. First, no bond is required if the Court issues a statutory injunction under § 5331(a), because such injunctions fall outside the scope of Rule 65 (and IHS does not argue otherwise). Second, even if the Court instead grants an equitable injunction under Rule 65, IHS has offered no response to the Tribe's argument that IHS would suffer no harm. *See* Dkt. No. 58 at 34. Likely for these reasons, Plaintiff has found no instances of courts requiring a bond when granting preliminary injunctions in the ISDA context. *See Sage*, 100 F. Supp. 3d at 1192; *Fort Defiance Indian Hosp. Bd., Inc. v. Becerra*, 604 F. Supp. 3d 1187, 1263 (D.N.M. 2022). This Court should not do so either.

CONCLUSION

For the foregoing reasons, Pechanga is entitled to a preliminary statutory injunction (or, in the alternative, a Rule 65 equitable preliminary injunction) compelling IHS to award and fund the proposed compact and funding agreement. A revised form of proposed Order accompanies this reply.

Respectfully submitted this 13th day of April 2026.

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Pechanga Band of Indians, certifies that this memorandum complies with the limit set out in section 9.b. of this Court's Standing Order, Dkt. No. 36, because it does not exceed 12 pages. The memorandum has been prepared in a proportionally-spaced typeface using Microsoft Word for Office 365 Times New Roman 14-point font.

DATED this 13th day of April 2026 at Anchorage, Alaska.

SONOSKY CHAMBERS SACHSE MILLER & MONKMAN, LLP

By: */s/ Lloyd B. Miller*
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