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**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF CALIFORNIA**

PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS, a federally recognized Indian tribe,

*Plaintiff*,

v.

THE CHAIR OF THE NATIONAL INDIAN GAMING COMMISSION; UNITED STATES NATIONAL INDIAN GAMING COMMISSION; NORTH FORK RANCHERIA OF MONO INDIANS, a federally recognized Indian tribe; and DOES 1-10,

*Defendants*.

STATION CASINOS LLC, a Nevada limited liability corporation; RED ROCK RESORTS, INC., a Delaware corporation; and SC MADERA MANAGEMENT, LLC, a California corporation,

*Nominal Defendants*.

Case No. 1:26-cv-04343-KES-SAB

**DEFENDANT NORTH FORK RANCHERIA OF MONO INDIANS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT**

| | |
|---|---|
| Date: | October 5, 2026 |
| Time: | 1:30 p.m. |
| Place: | Courtroom 6, 7th floor |
| Judge: | Hon. Kirk E. Sherriff |

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## INTRODUCTION

This is the third case the Picayune Rancheria of Chukchansi Indians ("Picayune") has filed in federal court to challenge the federal government's actions authorizing the North Fork Rancheria of Mono Indians ("North Fork") to open a casino in Madera County on land the Secretary of the Interior ("Secretary") acquired for that very purpose more than a decade ago. Picayune has pressed variations on the same arguments each time—namely, that the Governor of California did not lawfully "concur" in the Secretary's decision to take the land into trust for North Fork's gaming project, as required under the Indian Gaming Regulatory Act ("IGRA"), and that competition from North Fork's casino would unlawfully reduce revenues at Picayune's Chukchansi Gold Resort and Casino, which is some 39 miles away. Those arguments lack any merit under federal law, as multiple federal courts have already concluded.

Picayune first sued the Secretary in the U.S. District Court for the District of Columbia to challenge the decision to take the Madera land into trust, bringing claims under the Administrative Procedure Act ("APA"), the Indian Reorganization Act ("IRA"), and IGRA. Then-Chief Judge Beryl Howell granted summary judgment to the Secretary and North Fork—and denied summary judgment to Picayune and its allies—in a decision spanning more than 100 pages. *Stand Up for California! v. United States Dep't of the Interior*, 204 F. Supp. 3d 212, 256 (D.D.C. 2016). As most relevant to this motion, she disposed of Picayune's concurrence claim on two grounds—first, that Picayune had "abandoned" it on summary judgment, and second, that the claim could not in any event proceed without joining the Governor. *Id.* at 247 n.16, 254. The D.C. Circuit affirmed on both "independently dispositive" grounds. *See* 879 F.3d 1177, 1186 (D.C. Cir. 2018). (The D.C. Circuit also affirmed Chief Judge Howell's rejection of Picayune's competition-based claim, *id.* at 1189-90.)

While the D.D.C. litigation was pending, Picayune brought a parallel suit in this District to challenge the Secretary's issuance of "Secretarial Procedures" under IGRA formally authorizing North Fork to conduct class III gaming on its Madera County trust land. After admonishing Picayune for "playing fast and loose with the courts" by advancing inconsistent positions in its

respective cases, Judge Anthony Ishii likewise granted summary judgment to the Secretary and North Fork—and denied it to Picayune. *Picayune Rancheria of Chukchansi Indians v. United States Dep't of the Interior*, 2017 WL 3581735, at *13 (E.D. Cal. Aug. 18, 2017). In rejecting Picayune's concurrence-based challenge to the Secretarial Procedures, he ruled: "The Secretary did not err by prescribing procedures under which North Fork could conduct class III gaming at the Madera Site." *Id.* Picayune did not appeal.

Undeterred by that history, Picayune has repackaged those claims for this Court. In its APA claim, it now contends the Chair of the National Indian Gaming Commission ("NIGC") erred by approving North Fork's management contract (in January 2024), because a subsequent decision by the California Court of Appeal (in December 2025) concluded that, as a matter of state law, the Governor's 2012 concurrence in the Secretary's decision to take the Madera land into trust had been "retroactively annulled" such that it was "void ab initio." In its IGRA claim, Picayune contends that the Secretarial Procedures the Secretary issued in 2016 expressly *to authorize* class III gaming should now be construed *to preclude* class III gaming because of the California Court of Appeal's subsequent decision. But those repackaged claims fail for multiple reasons, each providing an independent basis for dismissal.

***First,*** Picayune cannot sue North Fork, a federally recognized Indian tribe that enjoys sovereign immunity. And because North Fork is a required party that cannot be joined under Federal Rule of Civil Procedure 19, Picayune's claims must be dismissed under Rule 12(b)(7). Indeed, there is "a wall of circuit authority" to that effect. *Maverick Gaming LLC v. United States*, 123 F.4th 960, 981 (9th Cir. 2024), *cert. denied sub nom. RunItOneTime LLC v. United States*, 146 S.Ct. 98 (2025). Its IGRA claim fails for the additional, related reason that Picayune cannot sue to nullify the Secretarial Procedures without naming the Secretary as a party.

***Second*,** Picayune's case amounts to an impermissible—and untimely—collateral attack on the Secretary's 2012 decision to take the Madera land into trust and the Secretary's 2016 issuance of Secretarial Procedures. Such collateral attacks are foreclosed by the Ninth Circuit's decision in *Big Lagoon Rancheria v. California*, 789 F.3d 947, 953-954 (9th Cir. 2015) (en banc),

which requires challenges to federal agency actions to be brought against the responsible officials directly, within the APA's six-year statute of limitations.

***Third***, Picayune's APA claim fails because, when reviewing a management contract between a gaming tribe and a private-sector management company, the NIGC Chair has no statutory or regulatory authority to reconsider (let alone to countermand) the Secretary's underlying gaming authorizations for the tribe. Accordingly, there was nothing "arbitrary, capricious, … or otherwise not in accordance with law" in the Chair's approval of North Fork's management contract in 2024 (nor was it an "abuse of discretion"), as required to state a claim under the APA, 5 U.S.C. § 706(2)(A).

***Fourth***, Picayune's IGRA claim fails because IGRA provides no private right of action for a tribe to enjoin another tribe's gaming under Secretarial Procedures. Only "the Secretary" may initiate an enforcement action with respect to such gaming. 25 U.S.C. § 2710(d)(7)(A)(iii).

***Fifth***, even if Picayune could overcome each of these independently dispositive barriers, basic principles of federalism and administrative law foreclose any attempt to unwind the Secretary's 2012 and 2016 actions based on subsequent developments under state law.

As none of these defects can be cured by further amendment—and Picayune has already amended its original complaint—the Court should dismiss Picayune's case with prejudice.

## BACKGROUND[1]

### I. FEDERAL REGULATION OF INDIAN LANDS AND TRIBAL GAMING ACTIVITIES

Under the U.S. Constitution, Congress enjoys "plenary and exclusive" power over Indian affairs, "superseding … state authority." *Haaland v. Brackeen*, 599 U.S. 255, 272-273 (2023) (citing "a long line of cases" to that effect). The federal government thus has exclusive authority to acquire land for Indian tribes, which Congress has delegated to the Secretary through the IRA. *See*, *e.g.*, *Confederated Tribes of Siletz Indians of Ore. v. United States*, 110 F.3d 688, 694 (9th

[1] North Fork assumes the truth of Picayune's factual allegations only for the purpose of this motion to dismiss; Picayune's legal conclusions, however, need not be accepted. *See, e.g., Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Cir. 1997). The IRA authorizes the Secretary "to acquire … any interest in lands … within or without existing reservations … for the purpose of providing land for Indians." 25 U.S.C. § 5108. The federal government also has exclusive authority to regulate gaming on Indian lands. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 222 (1987). States lack any such authority, except as provided by Congress.

IGRA provides the federal statutory framework for regulating gaming on Indian lands. *See* 25 U.S.C. § 2702(1). Congress enacted IGRA in response to *Cabazon* "as a means of granting states some role in the regulation of Indian gaming." *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 715 (9th Cir. 2003). IGRA regulates, among other things, the categories of gaming permitted on Indian lands. As relevant here, class III gaming, or "casino-style" gaming, is authorized on lands that are "located in a State that permits such gaming for any purpose" and if it is either "conducted in conformance with a Tribal-State compact" between a tribe and the state, 25 U.S.C. § 2710(d)(1), or pursuant to procedures prescribed by the Secretary, *id.* § 2710(d)(7). IGRA also regulates where tribal gaming may occur. It generally prohibits class III gaming on Indian lands acquired after IGRA was enacted in 1988 ("after-acquired lands"), subject to several exceptions. *Id.* § 2719.

The exception relevant here allows tribes to game on after-acquired lands taken into trust by the Secretary for the benefit of a tribe if (i) the Secretary determines that gaming "would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community" and (ii) "the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination." 25 U.S.C. § 2719(b)(1)(A). "The Governor's authority under IGRA extends only to making [this] single determination," *i.e.*, concurring with the Secretary's decision to permit class III gaming on after-acquired trust land. *Confederated Tribes*, 110 F.3d at 698; *see also Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wis. v. United States*, 367 F.3d 650, 661 (7th Cir. 2004).

## II. NORTH FORK AND THE MADERA SITE

North Fork is a federally recognized Indian tribe (FAC ¶ 8), with more than 3,000 tribal citizens. North Fork has no viable opportunities for economic development other than gaming, and the Tribe's members suffer from widespread unemployment and poverty. *See Stand Up*, 204 F. Supp. 3d at 228.

In 2005, North Fork requested the Department of the Interior to take into trust a 305-acre parcel of land in Madera County (the "Madera Site") so that North Fork could develop a resort hotel and casino to support its tribal government and services. FAC ¶ 8. In 2011, after six years of federal review, the Secretary issued a so-called "two-part determination" concluding that North Fork's project was in the best interest of the tribe and its citizens and would not be detrimental to the surrounding community, thereby satisfying the first step of the relevant § 2719 exception. *Id.* ¶ 47; *see also* 25 U.S.C. § 2719(b)(1)(A). In August 2012, the Governor of California concurred in the Secretary's determination, thereby satisfying the second step of the § 2719 exception. FAC ¶ 48. The Secretary decided to take the land into trust in November 2012, and the Madera Site was formally taken into trust for North Fork in February 2013, at which point the land became "Indian lands" under IGRA, 25 U.S.C. § 2703(4).

In August 2012, the Governor executed a tribal-state gaming compact with North Fork, which the California legislature ratified by statute in July 2013. *See* 2013 Cal. Stat. ch. 51 (A.B. 277). Opponents then qualified a voter referendum on the statute ratifying the compact. That referendum, known as Proposition 48, was rejected in the November 2014 election, which meant the compact-ratification statute did not go into effect. *See* FAC ¶ 49.

When California refused to negotiate a new compact with North Fork, North Fork sought relief in this court pursuant to IGRA's statutory remedial process, 25 U.S.C. § 2710(d)(7). *See North Fork Rancheria of Mono Indians v. California*, 2015 WL 11438206, at *3 (E.D. Cal. Nov. 13, 2015). Judge Ishii found that California had refused to negotiate in good faith in violation of IGRA, and the state did not appeal. *See id.* at *12. When the court-ordered mediation process failed to result in a new compact, IGRA required the Secretary to issue "procedures … under which

class III gaming may be conducted [by North Fork]." 25 U.S.C. § 2710(d)(7)(B)(vii). The Secretary issued such "Secretarial Procedures" in July 2016, expressly authorizing North Fork to conduct class III gaming activities on the Madera Site. *See generally* Secretarial Procedures for The North Fork Rancheria of Mono Indians (July 2016); *see also* FAC ¶ 51.[2]

IGRA permits tribes to execute management contracts with third parties for the management and operation of gaming facilities. FAC ¶ 34; *see also* 25 U.S.C. § 2710(d)(9). North Fork executed a management contract with Nominal Defendant SC Madera Management, LLC in 2023. FAC ¶¶ 11, 56.

IGRA delegates regulatory authority over management contracts to the NIGC. *See* 25 U.S.C. §§ 2705(a)(4), 2711; *see also* FAC ¶¶ 9, 34-36. The Chair of the NIGC is authorized to approve or disapprove management contracts for the operation of gaming activities pursuant to criteria set forth in IGRA and the NIGC's implementing regulations. *See* 25 U.S.C. §§ 2705(a)(4), 2711; 25 C.F.R. § 533. The Chair approved North Fork's management contract in January 2024. *See* FAC ¶ 31 n.1.

## III. PICAYUNE'S LITIGATION CAMPAIGN AGAINST NORTH FORK'S GAMING AUTHORIZATIONS

### A. Prior Federal Litigation

As noted, this is the third suit that Picayune has filed in federal court to interfere with North Fork's casino project. Its first was filed in December 2012. *See Picayune Rancheria of the Chukchansi Indians v. United States Dep't of the Interior*, Case No. 12-cv-02071-BAH (D.D.C.). Picayune alleged that the Secretary's decision to take the Madera Site into trust as gaming-eligible land "violated the APA, IGRA, and IRA by relying on a purported concurrence from the Governor of California that is ultra vires and invalid under California law." *Stand Up*, 204 F. Supp. 3d at

[2] Because the Secretarial Procedures "form the basis" of Picayune's IGRA claim, they are properly before the Court for purposes of this motion. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018). They are publicly available at https://www.bia.gov/sites/default/files/dup/assets/public/oig/pdf/idc2-040007.pdf.

247 n.16.[3] Picayune conclusively lost in district court, *id.* at 228, and the D.C. Circuit unanimously affirmed, 879 F.3d 1177.

In July 2016, while the D.D.C. litigation was pending, Picayune sued in this court, seeking (as amended) "declaratory relief that [the Madera Site is] not eligible for gaming under [IGRA]," and that the Secretary's two decisions—first, to take the land into trust, and then to issue secretarial procedures—"became invalid by operation of law, as a result of no affirmative concurrence … having been made by the Governor[.]" Am. Compl., *Picayune Rancheria of Chukchansi Indians v. United States Dep't of the Interior*, Case No. 16-cv-00950-AWI-EPG (E.D. Cal.), ECF No. 3 ¶¶ 1, 5. Picayune also sought "an order holding unlawful and setting aside the … 'Secretarial Procedures' for the North Fork Tribe, which purport to authorize the North Fork Tribe to conduct class III gaming … on the Madera [Site]." *Id.* ¶ 5. Picayune lost again. Judge Ishii granted summary judgment to North Fork and the Interior Department, concluding that "[t]he Secretary ***did not err*** by prescribing procedures under which North Fork could conduct class III gaming at the Madera Site." *Picayune Rancheria*, 2017 WL 3581735, at *13.[4] Picayune did not appeal.

**B. Prior State Litigation**

Picayune and its allies also sued in California state court to challenge the validity of the Governor's concurrence under state law. *See* FAC ¶¶ 45-52. Three state court decisions are relevant to this litigation.

First, in *United Auburn Indian Community of Auburn Rancheria v. Newsom*, 472 P.3d 1064 (Cal. 2020), the California Supreme Court held that state law authorized the Governor to concur. "What we hold is that California law empowers the Governor to concur. … [W]e conclude the Governor acted lawfully when he concurred in the Interior Secretary's determination." *Id.* at 1067. While upholding the Governor's exercise of his concurrence authority in 2012, the Court also

[3] Picayune's D.D.C. case was consolidated with a parallel suit by Stand Up for California! and was litigated under the *Stand Up* caption.

[4] Unless otherwise indicated, all emphases are added.

noted that the concurrence power is not "indefeasible," and that state lawmakers "remain[ed] free to restrict or eliminate the Governor's authority to concur." *Id.* at 1080, 1082.

Second, in *Stand Up for California! v. California*, 278 Cal. Rptr. 3d 627, 630 (Cal. Ct. App. 2021), the California Court of Appeal relied on the Supreme Court's observation that the concurrence power is not "indefeasible" to hold that Proposition 48—the 2014 voter referendum on the legislation ratifying North Fork's tribal-state gaming compact—"impliedly revok[ed]" the Governor's 2012 concurrence, such that it was "no longer valid" under state law.

Third, most recently, in *Picayune Rancheria of Chukchansi Indians v. North Fork Rancheria of Mono Indians*, 340 Cal. Rptr. 3d 219, 236 (Cal. Ct. App. 2025), the California Court of Appeal held that Proposition 48 also should be construed to "include[] an implied annulment of the Governor's concurrence that rendered the concurrence void ab initio" under state law. Although Picayune had sought declaratory and injunctive relief to prevent North Fork from gaming under federal law, the superior court denied such relief, and Picayune did not appeal; the Court of Appeal thus declined to decide "[w]hat effect, if any," the retroactive state-law annulment would have under federal law. *Id.* at 231.

**LEGAL STANDARD**

Rule 12(b)(6) requires the plaintiff "to state a claim upon which relief can be granted." Dismissal is appropriate when the complaint "lacks a 'cognizable legal theory' or sufficient factual allegations to 'support a cognizable legal theory.'" *Saloojas, Inc. v. Aetna Health of Cal., Inc.*, 80 F.4th 1011, 1014 (9th Cir. 2023). In particular, dismissal is warranted where the governing law provides no private right of action. *See, e.g., id.* at 1016.

Rule 12(b)(7) governs dismissal for failure to join a party required under Rule 19, which "sets forth a three-step inquiry." *Maverick Gaming*, 123 F.4th at 972. The court first "determine[s] whether the absent party is 'required' under Rule 19(a)." *Id.* If so, it "determine[s] whether joinder of that party is feasible. If joinder is infeasible," the court then determines whether "'the action should proceed among the existing parties or should be dismissed.'" *Id.* (citation omitted).

## ARGUMENT

### I. RULE 19 REQUIRES DISMISSAL OF BOTH CLAIMS BECAUSE NORTH FORK IS A NECESSARY PARTY AND IS PROTECTED FROM SUIT BY SOVEREIGN IMMUNITY

As a federally recognized Indian tribe, North Fork enjoys sovereign immunity from suit. Picayune's suit against North Fork therefore must be dismissed. North Fork is also a necessary party to this litigation under Rule 19. Because North Fork's sovereign immunity precludes joinder, dismissal of Picayune's claims against the other defendants is required under Rule 12(b)(7). This is not a novel situation; in fact, "there is a 'wall of circuit authority' in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity[.]" *Maverick Gaming*, 123 F.4th at 981. Indeed, the Ninth Circuit has repeatedly affirmed the dismissal of suits just like this one, in which opponents of tribal gaming projects challenge the federal decisions underlying those projects without the consent of the affected tribe. *See Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 989 (9th Cir. 2020); *Maverick Gaming*, 123 F.4th at 966. Picayune cannot overcome that "wall of circuit authority" to avoid dismissal here.

#### A. North Fork Has Sovereign Immunity To Picayune's Suit

North Fork is a federally recognized Indian Tribe (FAC ¶ 8) and thus enjoys sovereign immunity from suit. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). "Tribal sovereign immunity extends to both the governmental and commercial activities of a tribe, whether undertaken on or off its reservation." *Jamul Action Comm.*, 974 F.3d at 991. A tribe can be subject to suit only if (i) Congress has expressly abrogated the tribe's sovereign immunity or (ii) the tribe has unequivocally waived its immunity. *Kiowa Tribe of Okla. v. Manufacturing Techs., Inc.*, 523 U.S. 751, 754 (1998). Neither exception applies here.

**No abrogation.** Picayune's argument for congressional abrogation fails because it conflates two distinct subsections of the relevant IGRA provision, 25 U.S.C. § 2710(d)(7)(A). That provision waives tribal sovereign immunity for two specific causes of action against tribes:

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

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

25 U.S.C. § 2710(d)(7)(A). By its terms, subsection (ii) creates a cause of action for *states or Indian tribes* to enjoin class III gaming activities "*conducted in violation of any Tribal-State compact … that is in effect*." In contrast, subsection (iii) creates a cause of action for *the Secretary* to enforce Secretarial Procedures in the absence of an effective Tribal-State compact. Picayune obliterates that distinction, alleging that "IGRA establishes a right of action by an 'Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact [or equivalent Secretarial Procedures] … that is in effect.'" FAC ¶ 76 (alterations in Picayune's original). But Picayune is not free to rewrite IGRA to serve its own litigation interests; courts must apply the statute as written. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 804 (2014) ("We will not rewrite Congress's handiwork.").

Picayune cannot avail itself of subsection (ii) because no gaming compact is "in effect," And Picayune has been judicially estopped from advancing any such argument in this very court:

> It is clear from Picayune's statements that it is "playing fast and loose with the courts, seeking advantage by advancing mutually exclusive contentions" to different courts…. Picayune is judicially estopped from advancing the argument that the 2012 Compact is in effect in light of the District of Columbia's adoption of the opposite position advanced by Picayune in the District of Columbia action.

*Picayune Rancheria*, 2017 WL 3581735, at *13 (citation omitted). And Ninth Circuit precedent confirms that subsection (ii) is limited to claims involving violations of a compact. *See Arizona v. Tohono O'odham Nation*, 818 F.3d 549, 562 (9th Cir. 2016). Nor can Picayune avail itself of subsection (iii) because Picayune is obviously not "the Secretary," which is the only plaintiff that can bring a federal enforcement action against tribes under that subsection.[5]

Picayune cannot rely on the Supreme Court's decision in *Bay Mills* for the proposition that "Congress's enactment of 25 U.S.C. § 2710(d)(7)(A)(ii) 'partially abrogate[d] tribal sovereign immunity,' allowing this court to exercise jurisdiction over North Fork." FAC ¶ 21 (alteration in

[5] The complaint underscores the fatal flaw in Picayune's suit. "Picayune … seeks an injunction *enforcing the Secretarial Procedures*" (FAC ¶ 6), but IGRA authorizes only "the Secretary *to enforce the procedures*," 25 U.S.C. § 2710(d)(7)(A)(iii).

original). To the contrary, *Bay Mills* means just the opposite, as the Supreme Court *rejected* Michigan's request to adopt a "'holistic method' of interpreting IGRA" to broaden the congressional abrogation of tribal sovereign immunity in § 2710(d)(7)(A) beyond the narrow terms of the statutory text. 572 U.S. at 793. The Court reiterated that, for a valid abrogation to occur, "Congress must unequivocally express [its] purpose to subject a tribe to litigation." *Id.* at 794 (citations and internal quotation marks omitted, alteration in original); *see also Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 388 (2023) ("If there is a plausible interpretation of the statute that preserves sovereign immunity, Congress has not unambiguously expressed the requisite intent.") (citations and internal quotation marks omitted). And it concluded that "[t]he upshot is this: Unless Congress has authorized Michigan's suit, our precedents demand that it be dismissed." *Bay Mills*, 572 U.S. at 791. The same is true here. Congress abrogated tribal sovereign immunity only with respect to two specific types of suit, and Picayune's suit does not fit within either.

Picayune's other line of authority (FAC ¶ 20) provides no help either. In *Comanche Nation v. Ware*, the Tenth Circuit held that while 25 U.S.C. § 2710(d)(7)(A)(ii) "partially abrogates tribal sovereign immunity," it does so "only for cases that fall within [its] terms." 174 F.4th 717, 728 (10th Cir. 2026) (internal quotation marks omitted). And it explained that an essential "element" of the abrogation is that the suit involve a challenge to gaming "conducted in violation of [a] Tribal-State Compact that is in effect." *Id.* As noted, North Fork's gaming compact is not "in effect" and Picayune has been judicially estopped from arguing otherwise. Picayune's reliance on *Blue Lake Rancheria v. Kalshi, Inc.*, 2025 WL 3141202, *5 (N.D. Cal. Nov. 10, 2025) is also misplaced, as that case involved litigation affirmatively brought by plaintiff tribes to enforce *their own compacts and Secretarial Procedures* to protect against incursion by non-tribal commercial entities, such that the threshold issue of sovereign immunity was neither addressed nor relevant. And in *Stand Up for California! v. United States Department of the Interior*, the Ninth Circuit held that Secretarial Procedures are equivalent to a gaming compact for purposes of IGRA's exemption to the Johnson Act, codified at 25 U.S.C. § 2710(d)(6), not with respect to the abrogation of

sovereign immunity in § 2710(d)(7)(A), which was not addressed at all. *See* 959 F.3d 1154, 1159-1162 (9th Cir. 2020).

**No waiver.** Nor has North Fork waived its sovereign immunity to Picayune's suit. "It is well settled that a waiver of [tribal] sovereign immunity cannot be implied but must be unequivocally expressed." *Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1016 (9th Cir. 2016) (internal quotations omitted). Courts therefore "employ a strong presumption against … waiver," and any expression of waiver must "manifest the tribe's intent to surrender immunity in clear and unmistakable terms." *Id*. (internal quotations omitted). North Fork's limited participation in this suit by filing a motion to dismiss (and opposing Picayune's motion for a preliminary injunction) to assert its sovereign immunity does not constitute waiver. Indeed, it would "defy logic" to conclude that North Fork "clearly manifested its intent to waive the very immunity defense that it asserts." *Maverick Gaming*, 123 F.4th at 979 (quoting *Bodi*, 832 F.3d at 1018). And North Fork's intervention in prior cases (FAC ¶ 23) is not the "unequivocal[] express[ion]" of waiver that would be required for Picayune to initiate fresh litigation directly against the Tribe here. *Bodi*, 832 F.3d at 1016.

Thus, North Fork retains its immunity, and Picayune's case against it must be dismissed.

### B. North Fork Is A Required Party And Joinder Is Infeasible

North Fork is a required party to this case because it has a legally protected interest that may be impaired or impeded if litigation proceeds in the tribe's absence. The Ninth Circuit's decisions in *Jamul Action Committee* and *Maverick Gaming* are dispositive on this point.

In *Jamul Action Committee*, opponents of a tribal gaming project sought to prevent the Jamul Indian Village from building and operating a casino on its tribal land, arguing that the tribe should not have been federally recognized and therefore could not use its land for gaming. *See* 974 F.3d at 998. "When dealing with claims challenging federal actions that alter tribal rights," the Ninth Circuit explained, "we have distinguished between those that would have retroactive effects on rights already enjoyed by a tribe and those relating only to the agencies' future administrative process." *Id.* at 997 (internal quotation marks and alterations omitted). Because

the plaintiffs in that case sought to interfere with tribal rights already conferred by prior agency action rather than the Interior Department's future administrative process, the Ninth Circuit held that the tribe was a required party. *Id.*

The Ninth Circuit came to the same conclusion again four years later in *Maverick Gaming*, 123 F.4th at 972-983. There, a private casino operator challenged Washington state's approval of tribal-state compact amendments authorizing sports betting; it sought a declaration that the amended compacts were void and that the tribes' gaming activities violated IGRA. *Id.* at 972. The Shoalwater Bay Indian Tribe had an amended compact authorizing sports betting; it intervened and moved to dismiss on sovereign immunity and Rule 19 grounds. In concluding the tribe was a required party, the Ninth Circuit emphasized "the importance of tribal gaming … [and] the long history of tribal gaming and its associated benefits for the tribes." *Id.*

Like the tribes in *Jamul Action Committee* and *Maverick Gaming*, North Fork is a required party under Rule 19(a) because Picayune seeks relief that would impair North Fork's right to game by undermining prior federal actions authorizing its casino project. In particular, Picayune seeks to set aside the NIGC's approval of North Fork's 2024 management contract; a declaration nullifying the Secretary's 2012 decision taking the Madera Site into trust as gaming-eligible land; and injunctive relief preventing North Fork from gaming under the Secretarial Procedures issued in 2016 for that very purpose. *See* FAC p. 19. This is precisely the type of claim that required joinder of the tribes in *Jamul Action Committee* and *Maverick Gaming*.

The same line of Ninth Circuit authority also makes clear the United States cannot adequately represent North Fork's interests. Tribal interests in this context are "meaningfully distinct" from those of the United States. *Maverick Gaming*, 123 F.4th at 975. Challenges to a tribe's ability to game go beyond defending the targeted gaming authorization, as they also "implicate sovereign interests in self-governance." *Id*. (citations and internal quotation marks omitted). Thus, even though the United States and the affected tribe may "share an interest in the ultimate outcome of this case …, [Ninth Circuit] precedent underscores that such alignment on the ultimate outcome is insufficient … to hold that the government is an adequate representative of

the tribes." *Klamath Irrigation Dist. v. United States Bureau of Reclamation*, 48 F.4th 934, 945 (9th Cir. 2022).

**C. This Lawsuit Cannot Proceed In North Fork's Absence**

Because North Fork's sovereign immunity makes joinder impossible, the Court must determine whether the action can proceed "in equity and good conscience" in North Fork's absence. As the aforementioned "wall of circuit authority" makes clear, it cannot.

In evaluating whether a case may proceed in the absence of a required party, "courts consider (i) potential prejudice, (ii) possibility to reduce prejudice, (iii) adequacy of a judgment without the required party, and (iv) adequacy of a remedy with dismissal." *Klamath Irrigation Dist.*, 48 F.4th at 947 (citing Fed. R. Civ. P. 19(b)). In the Ninth Circuit, "[t]he balancing of equitable factors under Rule 19(b) almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity." *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021) (quoting *Jamul Action Comm.*, 974 F.3d at 998). Indeed, "virtually all the cases to consider the question appear to dismiss under Rule 19, regardless of whether [an alternate] remedy is available, if the absent parties are Indian tribes invested with sovereign immunity." *Diné Citizens Against Ruining Our Env't v. Bureau of Indian Affairs*, 932 F.3d 843, 857 (9th Cir. 2019) (alteration in original).

The Rule 19(b) factors favor dismissal here. As to the first, the potential prejudice to North Fork of a judgment rendered in its absence "would be enormous" because Picayune seeks relief that would directly impair North Fork's right to game. *Maverick Gaming*, 123 F.4th at 980 (noting that the prejudice factor of Rule 19(b) "largely duplicates the consideration that made a party necessary under Rule 19(a)"). As to the second, for the same reason, there is no way to reduce that prejudice; the stated purpose of Picayune's suit is to prevent North Fork from opening its long-planned casino. *See* FAC ¶ 1. As to the fourth, although Picayune would have no alternative judicial remedy, it has already ***twice*** had its day in federal court and lost both cases. In any event, the Ninth Circuit has "regularly held that the tribal interest in immunity overcomes the lack of an

alternative remedy or forum for the plaintiffs" when weighing this Rule 19 factor. *American Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2002).

Courts in the Ninth Circuit routinely dismiss similar cases on the grounds that tribes are indispensable parties. For example, in affirming the district's Rule 19 dismissal in *Jamul Action Committee*, the court of appeals explained: "Because we hold the [tribe] is protected by tribal sovereign immunity, we agree with the district court that the [tribe] cannot be joined in this action and that the action cannot proceed in equity and good conscience without it." 974 F.3d at 989. Likewise, in *Maverick Gaming*, the district court dismissed the case under Rule 19, and the Ninth Circuit affirmed: "[W]e agree with the district court that the Tribe is a required party that cannot be joined in the litigation, and [the] suit cannot proceed in equity and good conscience in the Tribe's absence." 123 F.4th at 966.[6] This Court should reach the same conclusion.

## II. RULE 19 INDEPENDENTLY REQUIRES DISMISSAL OF THE IGRA CLAIM BECAUSE THAT CLAIM CANNOT PROCEED IN THE SECRETARY'S ABSENCE

Picayune repeats the same error in its IGRA claim that warranted dismissal under Rule 19 of its concurrence claim in the D.D.C. litigation. As Chief Judge Howell explained in dismissing Picayune's concurrence-based challenge to the Secretary's decision to take the Madera Site into trust, California "unquestionably ha[d] an interest in … the continuing validity" of its Governor's concurrence, which made it a necessary party to Picayune's claim. *Stand Up*, 204 F. Supp. 3d at 253; *see also* 879 F.3d at 1186 (affirming the dismissal on that "independently dispositive" ground). The same is true here with respect to Picayune's claim regarding the Secretarial

[6] Other cases within Ninth Circuit are to the same effect. *See, e.g., Deschutes River All.*, 1 F.4th at 1163 (ordering dismissal of challenge to a tribe's operation of a hydroelectric project where the tribe co-owned the project and any relief would impair the tribe's ownership interests, but sovereign immunity barred joinder); *Backcountry Against Dumps v. United States Bureau of Indian Affairs*, 2021 WL 3611049 *7-12 (S.D. Cal. Aug. 6, 2021), *aff'd*, 2022 WL 15523095 (9th Cir. Oct. 27, 2022) (dismissing challenge to federal approval of wind-energy lease on tribal land because the requested relief would invalidate the tribe's lease rights and interfere with its control of tribal resources, but sovereign immunity precluded joinder); *Holl v. Avery*, 2025 WL 1785887 *5-6 (D. Ala. June 27, 2025), appeal docketed, No. 24-1161 (9th Cir.) (court was "bound by Ninth Circuit precedent to dismiss [an] action" involving construction of a rival casino because the competing tribe was a required party that could not be joined due to sovereign immunity).

Procedures, which by their terms constitute "the full and complete authorization by the Secretary of the Interior for [North Fork] to conduct class III gaming on its Indian lands pursuant to IGRA." Secretarial Procedures for North Fork Rancheria of Mono Indians § 18.2. Just as California "unquestionably" had an interest in the "continuing validity" of the concurrence, so too does the Secretary have an interest in the continuing validity of the Secretarial Procedures. Picayune cannot seek to nullify them in the Secretary's absence.

Yet Picayune never named the Secretary in this litigation, and it has now amended its complaint *to exclude* the other federal defendants from the IGRA claim—asserting it only against North Fork. *See* FAC p. 17. But just as the federal defendants cannot adequately represent North Fork's interests under Rule 19 for the reasons above, neither can North Fork represent the Secretary's interests—particularly where, as here, the Secretary acted pursuant to a judgment of this court and a statutory mandate specific to that office. *See Picayune Rancheria*, 2017 WL 3581735, at *13; 25 U.S.C. § 2710 (d)(7)(B)(vii). Picayune's omission of the Secretary as a party provides an independent basis for dismissing its IGRA claim under Rule 12(b)(7).

## III. PICAYUNE FAILS TO STATE ANY CLAIM UPON WHICH RELIEF CAN BE GRANTED

Picayune's case also fails on the merits for four independent reasons, each of which provides a separate basis for dismissal with prejudice under Rule 12(b)(6). ***First***, the Ninth Circuit's decision in *Big Lagoon* 789 F.3d at 953-954, forecloses Picayune's APA and IGRA claims because they amount to an impermissible collateral attack on the Secretary's 2012 and 2016 actions. ***Second***, Picayune's APA claim fails because the NIGC Chair has no statutory or regulatory authority to reconsider (let alone to countermand) the Secretary's underlying gaming authorizations for North Fork when approving a management contract. ***Third***, Picayune's IGRA claim fails because IGRA provides no cause of action for a tribe to enjoin gaming under Secretarial Procedures. And ***fourth***, even if Picayune could overcome these independently dispositive barriers, basic principles of federalism and administrative law prohibit unwinding the Secretary's 2012 and 2016 actions based on subsequent developments under state law.

### A. Picayune's APA And IGRA Claims Are An Impermissible Collateral Attack On The Secretary's 2012 And 2016 Actions

Picayune's case is plainly a collateral attack on the Secretary's 2012 decision to take the Madera Site into trust as gaming-eligible land, and on the Secretary's 2016 issuance of Secretarial Procedures to authorize class III gaming at the site. That is clear from the two-step formulation of each of Picayune's claims. In its APA claim, Picayune alleges that "[b]ecause the Governor never issued a valid concurrence, *the Madera [Site] does not qualify for IGRA's two-part determination exception*" (step 1) and that "*[b]ecause the Madera [Site] does not qualify for any IGRA exception necessary to conduct class III gaming*, … the Chair's approval of the Management Contract was arbitrary, capricious, an abuse of discretion, or otherwise contrary to law" (step 2). FAC ¶¶ 69, 74.[7] Likewise, in its IGRA claim, Picayune alleges that "[b]ecause the Governor never issued a valid concurrence, *the Madera [Site] does not qualify for IGRA's two-part determination exception*" (step 1), and that "*[b]ecause the Madera [Site] does not qualify for any IGRA exception necessary to conduct class III gaming*, the site does not qualify as 'eligible Indian lands … on which Class III gaming may lawfully be conducted' under IGRA" (step 2). FAC ¶¶ 83, 85. Were there any doubt on this point, it would be resolved by the Complaint's Prayer for Relief, which seeks a declaration that "the Madera [Site] does not qualify for [IGRA's] two-part determination" and a corresponding order enjoining gaming under the Secretarial Procedures. *See* FAC p. 19. Picayune, however, has conclusively lost its direct challenges to the Secretary's 2012 and 2016 authorizations of North Fork's gaming project, and it cannot relitigate them here through artful pleading.

The Ninth Circuit's en banc decision in *Big Lagoon* articulates the controlling legal principle in analogous circumstances and is dispositive here. In that case, California sought to avoid its obligation under IGRA to negotiate a tribal-state gaming compact with an Indian tribe on

[7] The Court need not pause long on Picayune's amended allegation (FAC ¶ 74) that the Chair erred because "no IGRA exemption from the Johnson Act applies," and that "North Fork's gaming therefore violates the Johnson Act." The Ninth Circuit rejected that exact argument in *Stand Up*, where it "conclude[d] that gaming conducted pursuant to Secretarial Procedures is ***not subject to the Johnson Act***." 959 F.3d at 1159.

two grounds—that the tribe should not have been federally recognized in 1979 and that the tribe's 1994 trust land therefore was ineligible for gaming. 789 F.3d at 952-955. California relied on the Supreme Court's intervening decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009), to challenge the Interior Department's prior actions, arguing that it undermined both the formal recognition of the tribe in 1979 and the subsequent decision to take land into trust for the tribe in 1994. *Big Lagoon*, 789 F.3d at 952-953.

The Ninth Circuit rejected California's arguments, explaining that a challenge to the Secretary's "decision to take land into trust is a garden-variety APA claim" and that "parties cannot use a collateral proceeding to end-run the procedural requirements governing appeals of administrative decisions." *Big Lagoon*, 789 F.3d at 953 (citation and internal quotation marks omitted). In other words, California could not use the 2009 *Carcieri* decision to attack the Department's 1979 and 1994 decisions "collaterally" in litigation against the tribe; to challenge those decisions, the State was required to bring a timely APA action directly against the Secretary. *Id*. at 954. The Ninth Circuit explained that a contrary rule allowing parties to "collaterally attack [prior] administrative proceedings would effectively circumvent the six-year statute of limitations we have held governs review of such actions." *Id*. at 953. Thus, the Ninth Circuit held that "California's arguments that the BIA does not properly hold the eleven-acre parcel in trust for Big Lagoon Rancheria fail, both because the state has failed to file the appropriate APA action and because such an APA challenge would be time-barred." *Id*. at 954.

So too here. Picayune cannot use litigation against the NIGC, its Chair, and the non-federal defendants to "end-run the procedural requirements" for a proper APA case against the Secretary challenging the Secretary's 2012 and 2016 actions. 789 F.3d at 953-954. To challenge those actions, Picayune had to bring a timely APA case directly against the Secretary. As noted, Picayune did so, twice—and it conclusively lost both times. First, when it directly challenged the Secretary's decision to take the Madera Site into trust as gaming-eligible land (on the grounds that the Governor's concurrence was invalid and that the Secretary had failed to account for the adverse effects of competition on Picayune's casino), the district court rejected the challenge, and the D.C.

Circuit affirmed. *See Stand Up*, 204 F. Supp. 3d at 254, *aff'd,* 879 F.3d 1177. As relevant to this motion, the D.C. Circuit held that Picayune had "abandoned any challenge to the concurrence" at summary judgment and "forfeited its opportunity" to challenge the district court's "dispositive" ruling on appeal. 879 F.3d at 1186. Second, when Picayune challenged the Secretary's issuance of Secretarial Procedures in 2016 in this court (again, on the theory that the Governor's concurrence was invalid), Judge Ishii likewise rejected the challenge: "The Secretary did not err by prescribing procedures under which North Fork could conduct class III gaming at the Madera Site." *Picayune Rancheria*, 2017 WL 3581735, at *13. Picayune did not appeal. Those decisions are final, and the APA's six-year statute of limitations has expired.

Picayune cannot circumvent these prior judgments by collaterally attacking the Secretary's 2012 and 2016 actions in the guise of challenging the NIGC's 2024 approval of North Fork's management contract, or by contending that "any class III gaming on the Madera [Site] would be in violation of the Secretarial Procedures" the Secretary issued for that very purpose (FAC ¶ 85). *See* Secretarial Procedures for North Fork Rancheria of Mono Indians §§ 3.0, 18.2. *Big Lagoon* is dispositive, and the complaint must be dismissed under controlling Ninth Circuit precedent.

### B. Picayune's APA Claim Fails Because The NIGC And Its Chair Lack Authority To Revisit The Secretary's Prior Actions

Although Picayune presents its APA claim as a challenge to the Chair's approval of North Fork's management contract, the claim rests on Picayune's underlying contention that the Madera Site is not gaming-eligible land. The statute and regulations governing NIGC approval of management contracts foreclose any such claim, as they do not authorize the Chair to reconsider the tribe's underlying authorization to game embodied in predicate actions taken by the Secretary, the more senior official entrusted with the requisite statutory authority. As relevant here, IGRA authorizes "the Secretary" (not the Chair) to make the relevant determinations to make land gaming-eligible under 25 U.S.C. § 2719(b)(1)(A). And IGRA obligated "the Secretary" (not the Chair) to prescribe the procedures at issue here. *See* 25 U.S.C. § 2710(d)(7)(B)(vii).

"Administrative agencies are creatures of statute. They accordingly possess only the

authority that Congress has provided." *National Fed'n of Indep. Business v. OSHA*, 595 U.S. 109, 117 (2022). Picayune, however, entirely ignores the statute authorizing the NIGC to approve or disapprove management contracts, 25 U.S.C. § 2705(a)(4), which authorizes the Chair to "approve management contracts … as provided in section … 2711." In turn, § 2711(b) governs the Chair's "approval" of management contracts, and states that the Chair "may approve" contracts that meet six enumerated criteria. 25 U.S.C. § 2711(b)(1)-(6). And § 2711(e) governs the Chair's "disapproval" of management contracts, and states that the Chair "shall not approve" any contract if the Chair makes any of four statutory determinations. *Id.* § 2711(e)(1)-(4). Neither section authorizes the Chair to reject (or even to revisit) the Secretary's acceptance of the relevant land into trust as gaming-eligible or the Secretary's issuance of Secretarial Procedures authorizing the tribe's gaming activity.[8]

Picayune's APA claim thus fails for the same reason the APA claim against the NIGC and its Chair failed in *Frank's Landing Indian Community v. NIGC*, 202 F. Supp. 3d 1204 (W.D. Wash. 2016). There, a federally recognized Indian community sued the NIGC, the Chair, and the Secretary seeking injunctive and declaratory relief to the effect that the community was entitled to game under IGRA. *Id.* at 1204-1205. The court dismissed the complaint as to the NIGC and its Chair because they lacked authority to override the Secretary's determination regarding the Indian community's status under IGRA. *Id*. at 1208. "'[A]n agency cannot be held accountable for the effects of actions it has no discretion not to take.'" *Id.* (alteration in original). In dismissing the claims against the NIGC and its Chair, the court explained that the plaintiff's "dispute is with the

[8] Picayune cannot overcome this basic problem by selectively quoting (FAC ¶ 42) *AT & T Corporation v. Coeur D'Alene Tribe*, 295 F.3d 899 (2002). In that case, the NIGC Chair approved a novel tribal lottery proposal that was presented to the NIGC on a blank slate (i.e., without any predicate determination by the Secretary regarding its legality). The NIGC action at issue thus did not require rejecting or nullifying any prior decisions of the Secretary, and the Ninth Circuit made clear that—given the unusual posture of the case—the Court would "draw[] no conclusions as to how the Lottery might fare when properly challenged in federal court[.]" *Id.* at 910 n.12.

Secretary and not the NIGC," and that granting relief to the plaintiff would "effectively convey more authority on the NIGC than Congress explicitly intended in the IGRA." *Id.*[9]

The same is true here. Nothing in IGRA or the NIGC's regulations even authorizes—let alone directs—the Chair to depart from prior determinations by the Secretary regarding whether land is eligible for gaming or whether Secretarial Procedures remain valid. As in *Frank's Landing Indian Community*, Picayune "has failed to state a legally cognizable claim against the [NIGC] and the Chairman," 202 F. Supp. 3d at 1208, and its APA claim must be dismissed.

**C. Picayune's IGRA Claim Fails Because IGRA Authorizes Only "The Secretary" To Sue Tribes To Enforce Secretarial Procedures**

IGRA does not authorize Picayune to file suit to enjoin North Fork's gaming operations for the reasons provided in Section I above, which warrant dismissal under Rule 12(b)(7). Those same reasons also compel dismissal under Rule 12(b)(6). As noted, 25 U.S.C. § 2710(d)(7)(A)(ii) and (iii) provide for two limited causes of action against tribes: (ii) suits "initiated by a State or Indian tribe" to "enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact," and (iii) suits "initiated by the Secretary to enforce [Secretarial Procedures]." Neither applies here, for the reasons discussed—i.e., no compact is in effect (and Picayune is judicially estopped from arguing otherwise), as required to initiate tribal litigation under § 2710(d)(7)(A)(ii), and Picayune is not "the Secretary" as required to bring a federal enforcement action under § 2710(d)(7)(A)(iii). "[W]here IGRA creates a private cause of action, it does so explicitly." *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000). Courts of appeals have held that the existence of explicit remedies in IGRA precludes alternative remedies not set out in the statute, applying the principle of statutory construction that "[w]here a statute creates a comprehensive regulatory scheme and provides for particular remedies, courts should not expand the coverage of the statute." *Id.* In short, Picayune has no claim upon which relief may be granted under IGRA; the claim should therefore be dismissed under Rule 12(b)(6).

[9] After dismissing the NIGC defendants, the court granted summary judgment to the Secretary, which the Ninth Circuit affirmed. *See* 918 F.3d 610 (9th Cir. 2019).

### D. Picayune's Case Fails Under Basic Principles Of Federalism And Administrative Law

Even if Picayune could overcome each of the above-explained independently dispositive barriers to this suit, its case would fail under basic principles of federalism and administrative law. Picayune's theory is that a 2025 decision by the California Court of Appeal regarding the retroactive effect *under state law* of a 2014 referendum on the status of the governor's 2012 concurrence nullifies the earlier actions of the Secretary (from 2012 and 2016) and the NIGC Chair (from 2024) *under federal law* because, in Picayune's view, those prior federal actions depended on the continued validity of the concurrence in California. That theory fails on its own terms, many times over.

***First***, a basic principle of administrative law is that courts evaluate the lawfulness of federal agency action based on the contemporaneous record before the federal official at the time they acted. Under the APA, "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *see also Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 743-744 (1985) (reviewing court applies APA standards to the agency decision "based on the record" before the agency). "It is black-letter administrative law that in an [APA] case, a reviewing court should have before it neither more nor less information than did the agency when it made its decision." *CTS Corp. v. EPA*, 759 F.3d 52, 64 (D.C. Cir. 2014) (internal quotation marks omitted). Here, the Secretary decided to take the Madera Site into trust as gaming-eligible land in 2012, well before the 2014 referendum and the decade-plus of state-court litigation that followed. And the Secretary prescribed the Secretarial Procedures in July 2016—more than nine years before the California Court of Appeal's decision in December 2025—pursuant to a statutory mandate following litigation in this court. *See* 25 U.S.C. § 2710(d)(7)(B)(vii). As Judge Ishii explained in rejecting Picayune's prior challenge to the Secretarial Procedures: "[T]he Secretary was ***required*** to prescribe procedures under which class III gaming could be conducted on the Madera Site." *Picayune Rancheria*, 2017 WL 3581735, *13. There was nothing "arbitrary, capricious, … or otherwise not in accordance with law" about those actions at the time they were taken, nor were

they "an abuse of discretion" under the APA, 5 U.S.C. § 706(2)(A). Indeed, the D.C. Circuit and this court have already rejected Picayune's arguments to the contrary.

***Second***, it is also well-established that federal officials may rely on the facially valid actions of state officials in discharging their federal responsibilities, and that the resulting federal actions will not be set aside based on state-law challenges to the underlying actions of state officials. The Supreme Court's decision in *Leser v. Garnett*, 258 U.S. 130 (1922), illustrates this principle. The Supreme Court there rejected a challenge to the Nineteenth Amendment based on a theory much like the one Picayune advances here. *Id*. at 137. Opponents of women's suffrage claimed that the U.S. Secretary of State erred in accepting the amendment into the federal constitution because, they argued, the Tennessee and West Virginia legislatures' ratifications were invalid under state law. *Id*. The constitutional ratification process at the time operated much like IGRA does today, requiring states to provide official notice of their ratification to the Secretary of State, who would certify the amendment as adopted upon receiving official notice from three-fourths of the states. *See* U.S. Const. art. V; Act of April 20, 1818, § 2, 3 Stat. 439. In rejecting the challenge, the Supreme Court explained: "As the Legislatures of Tennessee and West Virginia had power to adopt the resolutions of ratification, official notice to the Secretary, duly authenticated, that they had done so, *was conclusive upon him, and, being certified to by his proclamation, is conclusive upon the courts.*" *Leser*, 258 U.S. at 137.[10]

That principle applies with special force in the Indian law context, as established in the so-called "retrocession" cases. In 1953, Congress enacted 18 U.S.C. § 1162, commonly referred to as Public Law 280, which in relevant part gave some states the option to exercise criminal and civil law enforcement jurisdiction on tribal lands, ceding federal jurisdiction to the states that opted to exercise it. After public outcry, Congress revised Public Law 280 to provide a mechanism for

[10] It is beyond dispute that the Governor had power to concur when he did so in 2012. *See* FAC ¶ 52 ("[I]n *United Auburn*, the California Supreme Court held that … the Governor had the power to concur in the Secretary's determination for purposes of IGRA's two-part determination."). Rather, Picayune's case rests on subsequent developments under California law, which occurred from 2021-2025. *Id.* ¶¶ 53-59.

states to return (or "retrocede") jurisdiction back to the federal government. *See* 25 U.S.C. § 1323(a). The President authorized the Secretary, on behalf of the United States, to accept states' retrocession of jurisdiction. *See* Exec. Order No. 11435, 33 Fed. Reg. 17339 (Nov. 21, 1968).

In subsequent challenges to various states' retrocessions, the Ninth Circuit and other courts consistently held that the state-law validity of a state's retrocession was irrelevant to the effect of the retrocessions under federal law. *See United States v. Lawrence*, 595 F.2d 1149, 1151 (9th Cir. 1979); *Oliphant v. Schlie*, 544 F.2d 1007, 1012 (9th Cir. 1976), *rev'd on other grounds sub nom., Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); *Omaha Tribe of Neb. v. Village of Walthill*, 334 F. Supp. 823 (D. Neb. 1971), *aff'd*, 460 F.2d 1327 (8th Cir. 1972) (per curiam). The Ninth Circuit's decision in *Lawrence* is especially pertinent here, as it concerned retrocession by means of a gubernatorial proclamation. *See Lawrence*, 595 F.2d at 1151. A criminal defendant challenged the retrocession on the ground that it was invalid under Washington law because the governor's action was not authorized by appropriate state legislation. *Id.* The Ninth Circuit rejected the challenge:

> The question is one of federal law, not state law. The acceptance of the retrocession by the Secretary, pursuant to the authorization of the President, made the retrocession effective, whether or not the Governor's proclamation was valid under Washington law.

*Id.* (quoting *Oliphant*, 544 F.2d at 1012). In language directly relevant here, the Ninth Circuit "reject[ed] as *immaterial* the contention that the retrocession was invalid under state law." *Id.*

***Third***, Picayune's theory misunderstands the limited function of the concurrence—and of state law generally—under IGRA. States have no inherent regulatory authority over tribal gaming, as the Supreme Court made clear in *Cabazon*, 480 U.S. at 221-222. Rather, any such authority is provided by IGRA. *See Bay Mills*, 572 U.S. at 794. When opponents of IGRA's concurrence provision challenged its constitutionality by arguing that it vested governors with "significant authority" in violation of the Appointments Clause of the U.S. Constitution, courts rejected the challenges by emphasizing the limited authority that governors possess under IGRA. *See Confederated Tribes*, 110 F.3d at 698 ("The Governor's authority under IGRA extends only to

making a single determination[.]"); *Lac Courte Oreilles*, 367 F.3d at 661 ("A governor's role under 2719(b)(1)(A) is limited to satisfying one precondition to the Secretary['s] authority[.]"). In other words, "Congress did not select [the governor as] the administrator of federal gaming policy," *Lac Courte Oreilles*, 367 F.3d at 662. Picayune cannot transform the limited function IGRA permitted California's governor to perform in 2012 into a mechanism for states to interfere with federal gaming policy in perpetuity. Doing so would re-introduce the constitutional problems the Ninth and Seventh Circuits resolved more than two decades ago. While the governor's authority to concur is provided by state law, "the concurrence (or lack thereof) is given effect under federal law." *Confederated Tribes*, 110 F.3d at 697. The questions before this Court, therefore, are questions of federal law.

The D.C. Circuit observed nearly a decade ago that "[i]n this case, the Department made the required determinations, and California's governor concurred." *Stand Up for California!*, 879 F.3d at 1186. Those are historical facts, and Picayune cannot rewrite that history. Because federal law provides no basis to set aside any of the federal actions authorizing North Fork's gaming project, Picayune's APA and IGRA claims should be dismissed.

## CONCLUSION

The Court should dismiss Picayune's Amended Complaint with prejudice.

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