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UNITED STATES DISTRICT COURT
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, *et al.*,

Defendants.

No. 1:26-cv-4343-KES-SAB

FEDERAL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: October 5, 2026
Time: 1:30 pm
Judge: Hon. Kirk E. Sheriff
Ctrm: 6

I. INTRODUCTION

Plaintiff Picayune Rancheria moves this Court for a preliminary injunction or stay of the National Indian Gaming Commission's approval of a management contract between North Fork Rancheria and a casino operator. This Court should deny Picayune's motion because Picayune has not met its heavy burden of demonstrating that this extraordinary relief should issue.

First, Picayune has not shown even substantial questions going to the merits of its claims, let alone a likelihood of success on its first cause of action against the National Indian Gaming Commission (NIGC) and the Chair of the NIGC ("NIGC Chair") (collectively, "NIGC"). NIGC complied with all statutory and regulatory requirements governing approval of management contracts. Those requirements do not include a duty to reopen years-old gaming eligibility determinations based on the outcome of post-decisional state-court litigation. Nor could NIGC have violated the APA by not considering state court litigation that was not final until two years after NIGC's decision. And Picayune's argument that NIGC erred by not making such a determination is not based on any applicable law and Picayune therefore is not likely to succeed on the merits of this case.

In addition, Picayune has not shown irreparable harm sufficient to justify an injunction. Picayune makes no effort to present evidence that its gaming facility, located thirty miles from North Fork's, would suffer irreparable impacts from competition before this Court can rule on the merits of this case. But even if this Court were to conclude that Picayune has demonstrated a likelihood of success on the merits and irreparable harm, the balance of the equities and public interest weigh against injunctive relief. The Department of the Interior ("Interior") determined fifteen years ago that gaming would be in North Fork's best interest and took land into trust for gaming purposes. Those determinations were upheld by the courts. Picayune alleges that NIGC was required to reassess those gaming eligibility determinations made by a different agency years before. An injunction also would be go against IGRA's policy of tribal economic development and self-sufficiency, as it would make gaming operations harder to finance and develop if decisions could be overturned after years of investment.

The Court therefore should deny Picayune's motion.

II. BACKGROUND

A. The Indian Gaming Regulatory Act

1. Two-Part Determinations

IGRA was enacted in 1988 "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments[.]" 25 U.S.C. § 2702(1). IGRA makes class III gaming activities[1] lawful on the lands of federally recognized Indian tribes so long as the activities are (1) authorized by a tribal ordinance, (2) located in a state that permits such gaming for any purpose by any person, organization, or entity, and (3) conducted in conformity with a gaming compact entered into between the Indian tribe and the state or, alternatively, in conformity with class III gaming procedures issued by the Secretary. *Id.* § 2710(d).

Generally, IGRA bars gaming on lands that the United States takes into trust for tribes after October 17, 1988, with limited exceptions. *Id.* § 2719(a). The relevant exception for purposes of this case is the exception commonly known as the "Two-Part Determination," 25 U.S.C. § 2719(b)(1)(A), which states that gaming can take place on newly acquired land when:

> the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination.

Id.

2. Tribal-State Compacts and Secretarial Procedures

Under IGRA, a tribe that proposes to allow Class III gaming activities on its land must first request that the state enter into negotiations to result in a tribal-state compact governing the conduct of gaming activities, and the state is required to negotiate in good faith. 25 U.S.C. § 2710(d)(3)(A). If the state and tribe reach an agreement, the proposed compact must be submitted

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[1] Under IGRA, Class III gaming includes traditional "casino" games. 25 U.S.C. § 2710(d).

to the Secretary for review. 25 U.S.C. § 2710(d)(8)(A). The Secretary may approve or disapprove the compact or allow it to be deemed approved by taking no action. 25 U.S.C. § 2710(d)(8)(C). An approved or deemed approved compact becomes effective upon publication of the Secretary's notice of approval in the Federal Register. 25 U.S.C. § 2710(d)(3)(B).

If the state either does not respond to the tribe's request to negotiate a compact or does not respond to such request in good faith, the tribe may sue the state in federal court under IGRA's remedial provisions. 25 U.S.C. § 2710(d)(7)(A)(i). If the court finds that the state failed to negotiate in good faith over the compact, the court shall order that the compact be concluded within a sixty-day period. 25 U.S.C. § 2710(d)(7)(B)(iii). Should the state and tribe fail to conclude the tribal-state compact within sixty days, a mediator selects a compact from proposals from the tribe and the state. *Id.* § 2710(d)(7)(B)(iv), (v). If the state does not consent to the mediator-selected compact, the Secretary prescribes procedures for class III gaming activities consistent with the mediator-selected compact, called "Secretarial Procedures." *Id.* § 2710(d)(7)(B)(vii).

3. Management Contract Review

Gaming activity that occurs on Indian lands is regulated under IGRA, the NIGC's regulations, and the tribe's NIGC approved gaming ordinance. 25 U.S.C. § 2710(b), (d). Tribes can operate and manage gaming facilities themselves or enter into contracts with outside companies to do so. IGRA requires that the NIGC Chair approve all management contracts between tribes and outside entities managing gaming operations. 25 U.S.C. § 2711. NIGC Chair approval is not required if a Tribe manages its own gaming operation. 25 U.S.C. § 2710(b)(1).

The tribes and third parties must submit proposed management contracts to the NIGC Chair for review and approval. 25 U.S.C. § 2711(a)(1); 25 C.F.R. § 531.1. Part 533 of Title 25 of the Code of Federal Regulations lists management contract submission criteria which include, *inter alia*, an executed contract, 25 C.F.R. § 533.3(a), a list of all persons and entities with a financial interest in the contract, 25 C.F.R. § 533.3(d), and a legal description of the site on which the gaming operation to be managed is located, 25 C.F.R. § 533.3(h).

The NIGC reviews the submitted contract and related documents to ensure that all management contract requirements as articulated by IGRA and NIGC regulations are met. *See* 25 U.S.C. § 2711; 25 C.F.R. § 531.1, 533.3. The regulations also have content requirements for management contracts, such as provisions limiting the contract term and fee amount. 25 U.S.C. § 2711(b)-(c); 25 C.F.R. § 531.1(h)-(i). Additionally, any person or entity with management responsibility or a direct or indirect financial interest in the management contract is subject to a background investigation and must be found suitable by the NIGC Chair. 25 U.S.C. § 2711(a), (e)(1); 25 C.F.R. § 533.6(b), (c). 25 C.F.R. Part 533 also lists circumstances under which the NIGC Chair must or may disapprove management contracts, including when the NIGC Chair determines that a management contractor is unsuitable. 25 U.S.C. § 2711(e); 25 C.F.R. § 533.6.

IGRA provides that only the NIGC Chair, on behalf of the NIGC, and subject to appeal to the Commission, has the authority to approve management contracts. 25 U.S.C. § 2705(a)(4). Only a party to a management contract may appeal the approval or disapproval of the management contract pursuant to the NIGC administrative appeal process. 25 C.F.R. § 583.2. Commission Decisions on management contracts are "final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of Title 5." 25 U.S.C. § 2714.

B. Factual Background

"Facing high unemployment, inadequate public services, and an uncertain revenue stream, [North Fork] proposed in March 2005 to stimulate economic development by building a large-scale casino complex." *Stand Up for California! v. U.S. Dep't of Interior*, 879 F.3d 1177, 1179–80 (D.C. Cir. 2018). North Fork asked Interior for a two-part determination under IGRA and Interior regulations. *See* 25 U.S.C. § 2719(b)(1)(A); 25 C.F.R. § 292.13. After a years-long administrative process, in 2011, the Secretary of the Interior ("Secretary") determined under IGRA that gaming by North Fork on a site in Madera County, California, would be in the best interest of the tribe and its citizens and would not be detrimental to the surrounding community. The Governor of California concurred in that decision in August 2012, and the Secretary then took land into trust for gaming purposes in November 2012.

The Governor and North Fork executed a compact governing class III gaming, which the California legislature ratified. *Picayune Rancheria of Chukchansi Indians v. U.S. Dep't of Interior*, Case No. 1:16-cv-0950-AWI-EPG, 2017 WL 3581735, at *2 (E.D. Cal. Aug. 18, 2017). In a November 2014 referendum, California voters opted to overturn the legislative ratification of the compact. *Id.* After the state refused to negotiate a new compact, in 2016, Interior issued Secretarial Procedures, allowing North Fork to conduct class III gaming in accordance with IGRA. *See* Indian Gaming, 78 Fed. Reg. 62649-01 (Oct. 22, 2013). Picayune, the operator of a successful gaming facility approximately thirty miles from the North Fork site, and others unsuccessfully challenged the federal agency actions in federal court. *See Stand Up*, 879 F.3d at 1180; *Picayune*, 2017 WL 3581735, at *2; *Stand Up for California! v. U.S. Dep't of the Interior*, 204 F. Supp. 3d 212, 234 (D.D.C. 2016). These cases included arguments that the Governor's concurrence was invalid.

In November 2023, North Fork and SC Madera Management, LLC, executed a management agreement. 1st Am. Compl. (FAC), Dkt. No. 28, ¶ 56. On January 8, 2024, NIGC approved the Management Contract between North Fork and SC Madera Management, LLC. *Id.* ¶ 5. By approving the Management Contract, the NIGC Chair determined that the Tribe and Manager had fulfilled all submission and content requirements.

Picayune pursued state court litigation to challenge the validity of the Governor's concurrence. *Id.* ¶¶ 50, 52–54, 57–59. According to the FAC, in May 2024, the Superior Court for the County of Madera entered judgment in favor of Picayune, holding that because of the California referendum, "the Governor's concurrence has been annulled rendering it void *ab initio*." *Id.* ¶ 57. The court thus held that the "concurrence never took effect and is not in effect." *Id.* In December 2025, "the California Court of Appeal affirmed the Superior Court's judgment." *Id.* ¶ 58. "On April 1, 2026, the California Supreme Court denied North Fork's request for review, rendering the Superior Court's July 2024 judgment final for all purposes." *Id.* ¶ 59.

C. Procedural History

Picayune filed its Complaint in this Court on June 4, 2026. Compl. for Decl. & Inj. Relief, Dkt. No. 1. North Fork and the Nominal Defendants moved to dismiss the Complaint. Dkt. Nos.

21, 26. Plaintiff then filed its First Amended Complaint on August 20, 2026, and moved for a preliminary injunction and stay of the management contract approval on August 28, 2026, Dkt. No. 34. North Fork and the Nominal Defendants moved to dismiss the FAC. Dkt. Nos. 35, 36.

The FAC alleges two claims, only one against NIGC. FAC ¶¶ 62–74. The first cause of action alleges that the NIGC Chair's approval of the management contract violated the APA. According to Picayune, the California referendum made the governor's concurrence void *ab initio* and thus the North Fork site does not qualify for the two-part determination exception to IGRA's prohibition on gaming on later-acquired lands. Picayune asserts that the NIGC Chair can only approve a management contract if the gaming will be conducted under IGRA. *Id.* ¶ 71. This claim also asserts that gaming on the site violates the Johnson Act, 15 U.S.C. § 1175. Picayune's second cause of action is asserted against North Fork and alleges that North Fork is violating the Secretarial Procedures. *Id.* ¶¶ 75–89. On August 28, 2026, Picayune moved for a preliminary injunction and stay of NIGC's decision. Pl.'s Mem. of P&A in Supp. of Mot. for Stay & Prelim. Inj. ("Pl.'s Mem."), Dkt. No. 34-1.

III. STANDARD OF REVIEW

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The "requirement for substantial proof is much higher" for a motion for a preliminary injunction than it is for a motion for summary judgment. *Id.*

"A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter*, 555 U.S. at 20; *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Plaintiff bears the heavy burden of proving that each of these four factors is met. *DISH Network Corp. v. FCC*, 653 F.3d 771, 776–77 (9th Cir. 2011). In the Ninth Circuit, "serious questions going

to the merits and a hardship balance that tips sharply toward the plaintiff can support issuance of a preliminary injunction," though only "so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Cottrell*, 632 F.3d at 1135.[2]

IV. ARGUMENT

Picayune's motion for a preliminary injunction and stay should be denied because Picayune has not carried its heavy burden to demonstrate that such relief is necessary. Picayune cannot meet any of the four standards.

A. Picayune has not shown a serious question going to the merits, let alone a likelihood of success on the merits.

Picayune brings its claim against NIGC under the APA. 5 U.S.C. §§ 701–706. FAC ¶ 18. Such review is highly deferential. *Center for Biological Diversity v. Kempthorne*, 588 F.3d 701, 707 (9th Cir. 2009); *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 601 (9th Cir. 2014). Agency decisions may be overturned only if "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 891 (9th Cir. 2002) (citations omitted). An agency decision is arbitrary and capricious only if the agency:

> has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

O'Keeffe's, Inc. v. U.S. Consumer Prod. Safety Comm'n, 92 F.3d 940, 942 (9th Cir. 1996) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). The Court may not substitute its judgment for that of the agency. *State Farm*, 463 U.S. at 43. Instead, the

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[2] *Cottrell*'s relaxed sliding scale approach appears contrary to *Winter*, 555 U.S. at 22, but is nonetheless binding precedent that the Court must consider here. Regardless, not only does Picayune fail to establish serious questions on the merits of its claims, it is not entitled to review under *Cottrell*'s relaxed standard because it fails to establish a likelihood of irreparable injury, that the balance of hardships tips sharply in its favor, and that an injunction is in the public interest, as discussed below. *See Cottrell*, 632 F.3d at 1135.

Court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Jewell*, 747 F.3d at 601. Generally, "a court reviewing agency action under the APA must limit its review to the administrative record" that was "in existence at the time of the decision." *San Luis & Delta-Mendota Water Auth. v. Locke,* 776 F.3d 971, 992 (9th Cir. 2014).

Under the APA, a plaintiff must challenge final agency action. 5 U.S.C. § 704; *San Francisco Herring Ass'n v. Dep't of the Interior*, 946 F.3d 564, 575–76 (9th Cir. 2019). Picayune challenges NIGC's approval of the Management Contract. FAC ¶¶ 5, 63–74. It argues that the approval violates the APA because "NIGC could approve the Management Contract only if North Fork is entitled to conduct gaming under IGRA," and gaming cannot occur without governor concurrence, which the California referendum made void *ab initio*. *Id.* ¶¶ 63–64. But the state court decisions that Picayune claims made the concurrence invalid happened *after* the NIGC made its decision and thus NIGC could not have erred by not considering those cases. In any event Picayune fails to cite any statutory or regulatory requirement that NIGC undertake a new analysis of gaming eligibility as part of its approval of a management contract. NIGC complied with IGRA and the NIGC regulations for approval of management contracts and thus did not violate the APA.

It is uncontested that NIGC approved the Management Contract in January 2024. *See San Luis*, 776 F.3d at 992 ("When a reviewing court considers evidence that was not before the agency, it inevitably leads the reviewing court to substitute its judgment for that of the agency." (quoting *Asarco, Inc. v. EPA*, 616 F.2d 1153, 1160 (9th Cir. 1980))). Thus, the Court must consider whether NIGC's decision was arbitrary and capricious when it issued the decision in January 2024. It is also uncontested that the first state court decision holding that the Governor's concurrence was void *ab initio* was issued after January 2024.[3] FAC ¶ 57 (Superior Court decision of May 2024,

[3] Picayune refers to a 2021 California Appellate Court decision, but that decision found the Governor's concurrence was annulled, not void *ab initio*. Pl.'s Mem. 10. The FAC refers to the April 2026 California Supreme Court's denial of review as the "final California

judgment July 2024). "On April 1, 2026, the California Supreme Court denied North Fork's request for review, rendering the Superior Court's July 2024 judgment final for all purposes." *Id.* ¶ 59. Picayune thus asks the Court to find that NIGC acted arbitrarily by not considering state court decisions that were not final until *two years after* NIGC approved the Management Contract. This argument is contrary to well-established APA law and is not likely to succeed on the merits. *See San Luis*, 776 F.3d at 992.

But even if the state court litigation had been final before NIGC's decision, neither IGRA nor NIGC's regulations require NIGC to reopen the gaming eligibility determination when approving a management contract. The management contract provisions are aimed primarily at IGRA's purposes of ensuring that tribes are the primary beneficiary of casino profits, preventing corruption, and ensuring that gaming is conducted fairly and honestly. *See* 25 U.S.C. §§ 2702 (Declaration of congressional policy), 2711 (Management contracts). IGRA thus provides that the NIGC Chair may approve a management contract only after determining that the contract contains certain provisions. 25 U.S.C. § 2711(b). These requirements include ensuring the contract provides for adequate accounting procedures and reporting to tribes on a monthly basis, "an agreed ceiling for the repayment of development and construction costs," and grounds for terminating the contract. *Id*. Picayune has not identified any provision in section 2711 that NIGC failed to consider.

The NIGC regulations further detail the content of management contracts. FAC ¶ 71 (citing 25 C.F.R. §§ 531.1(a); 533.6(a)). 25 C.F.R. § 531.1 lists required provisions for management contracts. Picayune asserts that under 531.1(a), the NIGC "Chair may approve a management contract only if all gaming covered by the contract will be conducted in accordance with IGRA." FAC ¶ 71. But the regulation actually provides that management contracts must *have a provision* stating that all gaming conducted under the management contract will be conducted in accordance with IGRA and the governing tribal ordinance. 25 C.F.R. § 531.1(a) (emphasis added). Nothing in

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decision."

the regulation requires the NIGC Chair to take action other than ensuring the management contract contains such a provision.

Picayune also cites to NIGC regulations that provide that the NIGC Chair may approve a contract if it includes all required provisions and may disapprove a contract that does not comply with the required provisions. 25 C.F.R. § 533.6(a). Picayune does not identify any particular part of this regulation that NIGC purportedly violated. For class III gaming, the factors for which the NIGC Chair could disapprove a management contract are related to determinations that someone with a financial or management interest in the management contract "pose[s] a threat to the public interest or the effective regulation and control of gaming" or otherwise creates a danger of "unsuitable, unfair, or illegal practices" in "gaming or related business and financial arrangements." *Id*. § 533.6(c). Again, the requirement is aimed at ensuring that tribes are protected and preserving the integrity and regulation of gaming activities. The NIGC Chair had no basis to disapprove the Management Contract because North Fork and the manager fulfilled the submission requirements, content requirements, background investigation requirements, and did not run afoul of any disapproval criteria for management contracts. As such, NIGC did not violate the APA by approving the Management Contract.

AT&T Corp. v. Coeur d'Alene Tribe, 295 F.3d 899 (9th Cir. 2002) is inapposite and should not be read as broadly as Picayune asserts. There, a tribe had a compact that allowed it to offer class III gaming through a lottery on its reservation. *Id.* at 906. NIGC approved a management contract that allowed off-reservation players to buy tickets by phone, which the Ninth Circuit found was proof of "NIGC's determination that IGRA permits operation of the Lottery even though it allows ticket sales via off-Reservation phone calls." *Id.* at 909.

Picayune argues that *AT&T Corp.* stands for the proposition that the NIGC must reject any management contract proposal that does not conform to IGRA, Pl.'s Mem. 10, but the court's statements should be read in the context of the case. The court held that at some point in the approval process, NIGC had determined that IGRA allowed this type of gaming. The court referred to a "statutory framework [that] suffices to demonstrate that the NIGC must consider the legality

of Class III gaming before approving compacts, resolutions, ordinances, and management contracts," and "multiple final agency actions by the NIGC." 295 F.3d at 907–908. The Ninth Circuit also noted documentary evidence that showed the NIGC considered whether the gaming would be legal. *Id.* at 908–09. The case, therefore, may stand for the proposition that at some point in the IGRA process, a gaming eligibility determination must be made. Here, Interior made that determination when it took land into trust as part of a two-part determination in 2012. *AT&T Corp.* does not support Picayune's strained reading that NIGC is required to reanalyze that decision as part of its approval of a management contract.

In addition, the case is of limited applicability because it did not involve a direct challenge to NIGC's approval of the management contract in federal court. *Id.* at 909. And while the United States submitted an amicus brief on the appeal, it was not a party to the litigation. Indeed, the United States made similar arguments to here, arguing that NIGC's review of management contracts is limited in scope to those factors designated by IGRA. 1999 WL 33622333, *25. As such, *AT&T Corp*. does not support a finding that NIGC was required to reassess the gaming eligibility determination as part of its approval of the Management Contract.[4]

In short, Picayune's argument on the merits seeks to have NIGC undertake a re-review of the gaming eligibility determination as part of its approval of the Management Contract based on state court litigation after its decision. IGRA and the regulations do not require such a reexamination. NIGC complied with the requirements in IGRA and the regulations for approval

[4] In a footnote, Picayune also argues that the NIGC Chair's approval of the Management Contract was arbitrary and capricious because the Johnson Act, 15 U.S.C. § 1175(a), prohibits the transportation, possession, or use of gaming devices in Indian country. Pl.'s Mem. 10 n.4. Picayune does not establish how the approval of the Management Contract would violate the Johnson Act, other than to reiterate its argument that IGRA does not provide for gaming absent governor concurrence. Picayune does not cite any provision of IGRA or the regulations that requires NIGC to assess Johnson Act violations as part of its approval of the Management Contract.

of management contracts and the Court should defer to NIGC's determination under the APA. Picayune is not likely to succeed on the merits of its case.[5]

B. Picayune has not shown irreparable harm that would warrant an injunction.

Because Picayune has not shown a likelihood of success on the merits, the Court can deny its motion without addressing the other preliminary injunction factors. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2014). Should the Court reach the other factors, Picayune has also failed to demonstrate imminent irreparable harm that would justify an injunction. "Under *Winter*, plaintiffs must establish that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction." *Cottrell*, 632 F.3d at 1131 (citing *Winter*, 555 U.S. at 22).

Picayune has not established that it is likely to suffer irreparable harm sufficient to justify the extraordinary remedy of an injunction. Picayune argues that it would suffer "immediate irreparable harm" from loss of government functions and tribal sovereignty, reduction in essential services and benefits for tribal members, and significant economic damages that cannot be recovered. Pl.'s Mem. 19–22. But Picayune fails to show that these harms are likely to occur before the Court can rule on the merits of the case, much less that they would be irreparable.

First, the Court can consider Picayune's delay in bringing this case and seeking emergency relief as a factor. "A long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm." *Oakland Trib., Inc. v. Chron. Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985). Picayune waited more than two years to challenge NIGC's approval of the Management Contract. If NIGC acted unlawfully at the time of its decision, Picayune sat on its hands by waiting to file suit and seek emergency relief. If Picayune argues that it could not have brought this case

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[5] North Fork moved to dismiss the FAC because North Fork is a required party that cannot be joined due to its sovereign immunity and the case cannot proceed in its absence. NIGC's position is that, generally, the federal government is the only necessary defendant for an APA claim. We recognize, however, that *Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), and *Maverick Gaming LLC v. United States*, 123 F.4th 960 (9th Cir. 2024), are controlling authority and support dismissal.

until the state court decision on the void *ab initio* issue was final, then it demonstrates that NIGC could not have considered that information when it made its decision and thus did not act arbitrarily or capriciously.

Second, Picayune has not demonstrated that it is likely to incur significant losses from the opening of North Fork's gaming facility. Picayune provides multiple declarations attesting to a projected 30–50% reduction in gaming revenues, but never demonstrates how it arrived at this projection, much less that such reduction is *likely* to occur. *See Prestige Transp., Inc. v. SBA*, 850 F. App'x 551, 551 (9th Cir. 2021) (Mem.) (upholding denial of preliminary injunction when "Plaintiffs notably failed to submit *any* evidence of their current financial condition, despite alleging that they faced 'business ruination' absent an injunction"); *True Organic Prods., Inc. v. California Organic Fertilizers, Inc.*, No. 1:18-CV-1278 AWI EG, 2019 WL 1023888, at *4 (E.D. Cal. Mar. 4, 2019) ("Evidence and arguments that are 'cursory,' 'conclusory,' or amount to mere platitudes, are insufficient to demonstrate irreparable harm." (quoting *Herb Reed Enters., LLC v. Florida Entm't Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013))).

In addition, Picayune must demonstrate that the harm is likely to occur before the Court can issue a decision on the merits of the case. Picayune has offered no evidence that a temporary reduction in gaming revenue would constitute immediate irreparable harm.

Notably, IGRA does not guarantee that tribes operating existing facilities will continue to conduct gaming free from competition. *See, e.g.*, *Kalispel Tribe of Indians v. U.S. Dep't of the Interior*, 999 F.3d 683, 693 (9th Cir. 2021) (noting that lost gaming revenue from increased competition was considered by Secretary); *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 947 (7th Cir. 2000) ("[I]t is hard to find anything in [IGRA's Section 2719] that suggests an affirmative right for nearby tribes to be free from economic competition."). This Court has held "that competition alone from the proposed gaming facility in an overlapping gaming market is not sufficient to conclude that it would result in a detrimental impact on [a tribe with a competing facility]." *Citizens for a Better Way v. U.S. Dep't of Interior*, No. 2:12-cv-3021-TLN-AC, 2015 WL 5648925, at *15 (E.D. Cal. Sept. 24, 2015).

Indeed, the Secretary found in the two-part determination that the North Fork casino would not be significantly detrimental to the Picayune Tribe. *See* Ex. A (Two-Part Determination). The Secretary specifically found that the Picayune gaming facility is more than thirty miles from the North Fork site and has been successful in a highly competitive gaming market. *Id.* Accordingly, the Secretary concluded that Picayune would not suffer a detrimental impact, a finding that the D.C. district court upheld on summary judgment. *See Stand Up*, 204 F. Supp. 3d at 271–72 (citation, internal quotations and brackets omitted).

In any event, for "purely financial or economic" harms, "the barrier to proving irreparable injury is higher still, for it is 'well settled that economic loss does not, in and of itself, constitute irreparable harm.'" *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555–56 (D.C. Cir. 2015) (quoting *Wis. Gas. Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)); *see Rent–A–Center, Inc. v. Canyon Television & Appliance Rental, Inc.,* 944 F.2d 597, 603 (9th Cir. 1991) (holding that "economic injury alone does not support a finding of irreparable harm"). "Mere injuries, however substantial, in terms of money, time and energy . . . are not enough" to meet the threshold for irreparable harm. *Sampson v. Murry*, 415 U.S. 61, 90 (1974).

Picayune equates its injury to that found to be sufficient in *Seneca-Cayuga Tribe of Oklahoma v. State of Oklahoma ex rel. Thompson*, 874 F.2d 709 (10th Cir. 1989). But in that case, the state's action would have prevented the tribes' gaming operations from operating entirely. *Id.* at 709, 716. Thus, the injury in that case was far more significant than Picayune's alleged reduction in gaming profits while the Court decides the merits of the case.

Picayune has not demonstrated irreparable injury that would justify an injunction here.

C. The public interest and balance of equities disfavor an injunction.

Even if Picayune could demonstrate that it is likely to succeed on the merits and that it will be harmed irreparably absent an injunction, the public interest and the balance of the equities do not favor a preliminary injunction. *See eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). These two factors merge when the government is a party. *Drakes Bay*, 747 F.3d at 1092. If injunctive relief would harm the public interest, the Court may withhold the relief, even if doing

so would burden or cause irreparable injury to the movant. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312–13 (1982).

The public has an interest in the finality of government decisions. Here, the Secretary issued a two-part determination, took land into trust, and issued Secretarial Procedures for gaming on the Madera Parcel. Those decisions were challenged and upheld. Picayune seeks to overturn those decisions under the guise of challenging NIGC's approval of a management contract. This would not only upend the statute of limitations by allowing decisions to be opened at every step, it would also be contrary to IGRA's goals of tribal self-sufficiency and economic development. Tribes would have difficulty securing investors and operators of gaming enterprises if gaming eligibility decisions could be undone after years of investment and development.

In addition, the Court can also consider Picayune's delay in bringing this case and seeking preliminary relief when weighing the equities. Picayune challenges NIGC's decision issued in January 2024. It could have brought litigation at that time but did not. The factors weigh against an injunction here.

V. CONCLUSION

Picayune has not met its burden of proving any of the elements required to obtain preliminary injunctive relief. Picayune seeks to impose on NIGC a requirement not found in IGRA or its regulations and is not likely to succeed on the merits of its claim. In addition, Picayune has not established that immediate irreparable harm will occur before this Court can rule on the merits of the case, nor that the public interest weighs in favor of an injunction. For those reasons, NIGC respectfully requests that Picayune's motion for a preliminary injunction be denied.

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Respectfully submitted,

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