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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' OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION OR STAY

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

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INTRODUCTION

As discussed in the pending motion to dismiss (ECF Nos. 36, 36-1), 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 on its tribal land in Madera County. Having conclusively lost each of its prior challenges—in the U.S. District Court for the District of Columbia and the D.C. Circuit, as well as here in the Eastern District of California—Picayune now seeks a preliminary injunction to nullify the underlying federal authorizations on the eve of the casino's planned opening.

Picayune's preliminary injunction motion repackages the same arguments under the Indian Gaming Regulatory Act ("IGRA") that have already been rejected by the courts above. As the disposition of Picayune's prior cases is discussed at length in North Fork's pending motion to dismiss, North Fork will not repeat that discussion here—other than to note that, in denying a preliminary injunction in 2013 (one that sought to prevent the Secretary of the Interior from taking the Madera land into trust for North Fork's casino project), the district court rejected the central premise of Picayune's current motion. Mincing no words, the court explained: "***IGRA was intended to allow Indian tribes like the North Fork to engage in gaming on par with other tribes, not to insulate Indian gaming from normal market forces***." *Stand Up for California! v. United States Dep't of the Interior*, 919 F. Supp. 2d 51, 77 (D.D.C. 2013) (emphasis added, citation and internal quotation marks omitted).

Picayune's motion should be denied because it fails to satisfy any of the four requirements for a preliminary injunction:

First, Picayune cannot show a likelihood of success on the merits for the reasons set forth in North Fork's pending motion to dismiss, and for the additional reasons set forth herein, which go beyond those available under Rule 12(b).

Second, Picayune fails to demonstrate a likelihood of irreparable harm, for multiple reasons. *First*, it cannot overcome its years-long delay in filing suit or seeking preliminary relief, given the large body of caselaw holding that delays of even two months cut against the movant. *Second,* Picayune cannot overcome the Secretary's considered judgment that competition from

North Fork's casino would not jeopardize Picayune's casino—a judgment that was affirmed by the D.D.C. and D.C. Circuit in prior litigation. *Third*, Picayune's conclusory declarations fail to substantiate the need for *preliminary* relief now, before resolution on the merits in the ordinary course of litigation. *Fourth*, Picayune fails to explain why it cannot improve its own offerings to compete in the market, mitigating its projected losses. And *fifth*, Picayune cannot overcome the largely self-inflicted nature of its asserted harm.

Third, the balance of equities weighs sharply against Picayune. Picayune already operates a casino and, at most, alleges a reduction in revenue lost to competition. Meanwhile, an injunction preventing North Fork from opening its casino next month would undo decades of planning; nullify multiple federal approvals; shutter a brand-new facility; force North Fork to lay off many if not all of the casino's (approximately) 1300 employees; and further impoverish the tribe, which would face crippling debt obligations without the gaming revenue needed to meet them.

Fourth, a preliminary injunction would not serve the public interest, as it would undermine the primary purpose of IGRA, which is "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). And an injunction here would also result in devastating job losses in the community, as hundreds of employees would lose their full-time employment (with the attendant healthcare and retirement benefits) on the eve of the casino's planned opening.

The Court should forcefully reject Picayune's eleventh-hour attempt to block the opening of North Fork's federally approved gaming project. If the Court grants preliminary relief notwithstanding the extensive briefing against it, the Court should require Picayune to post a bond commensurate with the financial harm North Fork would suffer as a result.

BACKGROUND

A. Federal Authority Over Indian Lands And Tribal Gaming Activities

Under the U.S. Constitution and "a long line of cases," Congress enjoys "plenary and exclusive" power over Indian affairs, "superseding … state authority." *Haaland v. Brackeen*, 599 U.S. 255, 272-273 (2023). The federal government thus has exclusive authority to acquire land in trust for Indian tribes, which Congress has delegated to the Secretary of the Interior through the

Indian Reorganization Act ("IRA"). *See*, *e.g.*, *Confederated Tribes of Siletz Indians of Ore. v. United States*, 110 F.3d 688, 694 (9th Cir. 1997). The IRA authorizes the Secretary "to acquire … any interest in lands … within or without existing reservations … for the purpose of providing lands 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, 221-222 (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). 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 either "conducted in conformance with a Tribal-State compact" between a tribe and the state, *id.* § 2710(d)(1), or pursuant to procedures prescribed by the Secretary ("Secretarial Procedures"), *id.* § 2710(d)(7). IGRA 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." *Id.* § 2719(b)(1)(A).

B. North Fork And Its Federally Authorized Gaming Project

The North Fork Rancheria of Mono Indians is a federally recognized Indian tribe with more than 3,000 citizens, whose ancestors have occupied lands in the Sierra foothills and the San Joaquin Valley for generations. *See* First Amended Complaint ("FAC") ¶ 8; Declaration of Judy E. Fink ("Fink Decl.") ¶ 7; *Stand Up for California! v. United States Dep't. of the Interior*, 204 F. Supp. 3d 212, 228 (D.D.C. 2016), *aff'd* 879 F.3d 1177 (D.C. Cir. 2018), *cert. denied*, 139 S. Ct. 786 (2019). The North Fork Rancheria is located in a rugged, environmentally sensitive area that is unsuitable for significant commercial development, and the land is held for the benefit of individual tribal citizens rather than for the Tribe itself. Fink Decl. ¶ 13. The Tribe runs a small auto shop and convenience store in the town of North Fork, but both businesses operate at a loss.

Id. ¶ 8. It relies on grant programs for its other critical community services. *Id.* The Tribe suffers from widespread unemployment and poverty, and it has no realistic opportunities for economic development other than gaming. *Id.* ¶¶ 8-9.

To address this dire economic situation, North Fork has spent over twenty years working to develop a casino for the benefit of the Tribe. *See* Fink Decl. ¶¶ 10-12. 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. *See id.* ¶ 15; 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. *See* Fink Decl. ¶ 17; FAC ¶ 47; *see also* 25 U.S.C. § 2719(b)(1)(A). In August 2012, California's Governor concurred in the Secretary's determination. Fink Decl. ¶ 17; FAC ¶ 48. The Secretary decided to take the Madera Site into trust in November 2012 and formally did so in February 2013, at which point the land became "Indian lands" eligible for gaming under IGRA, 25 U.S.C. § 2703(4); Fink Decl. ¶ 18.

On August 30, 2012, the Governor of California executed a tribal-state gaming compact with North Fork, *see* Fink Decl. ¶ 17, which the California legislature ratified in July 2013. *See* 2013 Cal. Stat. ch. 51 (A.B. 277). As part of the compact, North Fork agreed to provide a portion of its gaming revenues to Picayune for a limited time provided Picayune did not challenge the compact or the trust acquisition. *See* ECF No. 34-2 (Declaration of Navi Singh Dhillon), Ex. B § 4.5; Fink Decl. ¶ 17. Opponents of North Fork's gaming project then qualified a voter referendum for the November 2014 election—Proposition 48—that was rejected by California voters, which meant the compact-ratification statute did not go into effect. *See* Fink Decl. ¶ 19; FAC ¶ 49. When California refused to negotiate a new compact, North Fork sought federal relief in this Court, and Judge Ishii found that California had refused to negotiate in good faith, in violation of IGRA. *See North Fork Rancheria of Mono Indians of California v. California*, 2015 WL 11438206, at *3 (E.D. Cal. Nov. 13, 2015). 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 procedures in July 2016, expressly authorizing North Fork to conduct class III gaming on the Madera Site. *See* Fink Decl. ¶ 20; *see also* FAC ¶ 51.

C. Picayune's Unsuccessful Campaign To Undermine North Fork's Project

Since the Secretary decided to take the Madera Site into trust for North Fork in 2012, Picayune and its allies have initiated more than half a dozen lawsuits challenging North Fork's ability to game at the site. Fink Decl. ¶ 21. Picayune filed its first federal case in December 2012 in the U.S. District Court for the District of Columbia. *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 "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 247 n.16.[1] Picayune conclusively lost in 2016, *id.* at 228, and the D.C. Circuit unanimously affirmed, 879 F.3d 1177 (D.C. Cir. 2018). In July 2016, Picayune filed a separate case in this court seeking a declaration that the Madera Site was ineligible for gaming and an order setting aside the Secretarial Procedures that authorize North Fork to conduct class III gaming there. Picayune lost again, *see Picayune Rancheria of Chukchansi Indians v. United States Department of the Interior*, 2017 WL 3581735, at *13 (E.D. Cal. Aug. 18, 2017), and did not appeal.

Picayune and its allies separately sued in California state court to challenge the validity of the Governor's 2012 concurrence under state law. Three state court decisions are relevant here. ***First***, in 2020, the California Supreme Court held that state law authorized the Governor to concur in 2012 and that "the Governor acted lawfully when he concurred in the Interior Secretary's determination," while also observing that the concurrence power was not "indefeasible." *United Auburn Indian Community of Auburn Rancheria v. Newsom*, 472 P.3d 1064, 1067, 1080, 1082 (Cal. 2020). ***Second***, relying on that observation, the California Court of Appeal held in May 2021 that Proposition 48 had impliedly revoked the concurrence, such that it was "no longer valid" under

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

state law. *Stand Up for California! v. State*, 278 Cal. Rptr. 3d 627, 630 (2021) ("*Stand Up II*"). ***Third*** and most recently, 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. *Picayune Rancheria of Chukchansi Indians v. North Fork Rancheria of Mono Indians*, 340 Cal. Rptr. 3d 219, 236 (Cal. Ct. App. 2025). 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.

D. The Interior Department's Favorable Indian Lands Opinion

In November 2021, after the California Court of Appeal held that the concurrence was "no longer valid" under state law in *Stand Up II*, North Fork sought an Indian Lands Opinion ("ILO") from the National Indian Gaming Commission ("NIGC") to reaffirm that the Madera Site remained eligible for gaming under federal law. *See* Fink Decl. ¶ 25, Ex. A. On March 22, 2022, the General Counsel of the NIGC issued a favorable ILO, which "determined that the Madera Site qualifies as Indian lands eligible for gaming under IGRA and, therefore, the Tribe may lawfully conduct gaming on this parcel." Fink Decl. ¶ 26, Ex. B. The ILO explained that the Madera Site satisfied each requirement of the relevant IGRA § 2719 exception, including the concurrence requirement. *See id.* The Solicitor's Office of the Department of the Interior concurred in the ILO. *See* Fink Decl. ¶ 26.

The ILO provided the Tribe with important reassurance that its federal authorization to game on the Madera Site remained intact, such that it could proceed with its project. *Id.* ¶ 27. Accordingly, North Fork entered into a management contract with its development partners in 2023, which the NIGC approved in 2024. *Id.* ¶ 28. North Fork thereafter obtained the necessary financing to continue and complete construction of the project. *Id.* In total, North Fork has incurred over $600 million of debt to fund the project as of August 31, 2026, and expects to incur another $100 million of debt by the casino opening date. *Id.*

On September 7, 2024, North Fork held a public groundbreaking ceremony to commemorate the beginning of construction. *Id.* ¶ 29. Hundreds of people attended the ceremony, which was a significant milestone for the Tribe and its citizens. *Id.* ¶¶ 29-30. The event was widely covered in the media. *Id.* ¶ 31, Ex. C. And for years North Fork has publicized the expected opening of its casino in the fall of 2026. *See* Fink Decl. ¶ 32.

E. Planned Opening Of The North Fork Casino

With construction expected to be completed in the coming weeks, the opening of the North Fork casino is scheduled for mid-October, 2026. Fink Decl. ¶ 32. The casino is expected to generate revenues that can not only supplement existing tribal programs, but also finally enable the Tribe to initiate new ones to provide additional housing, health care, elder programs, and social service programs for its citizens, *id.* ¶ 11. Over 1200 employees, including dozens of tribal citizens, have already been hired for the casino; over 1300 employees are expected to be on payroll for the casino's opening, some 90% of which will be full-time positions with medical, dental, vision, and 401(k) matching benefits. *Id.* ¶ 33. If the casino shutters, nearly all will lose their jobs, and the Tribe will be faced with crippling debt. *Id*. ¶¶ 28, 33.

LEGAL STANDARD

"A preliminary injunction is 'an extraordinary and drastic remedy.'" *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (citation omitted). It is never "awarded as of right." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). To obtain a preliminary injunction, the plaintiff must make a "clear showing" that: (i) it is likely to succeed on the merits, (ii) it is likely to suffer immediate irreparable harm in the absence of preliminary relief, (iii) the balance of equities tips in its favor, and (iv) the injunction is in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20, 22 (2008). The plaintiff bears the burden of establishing "all four prongs" of the *Winter* test. *Cottrell*, 632 F.3d at 1135. Courts may require less than likely success on the merits on the first factor, but only if the plaintiff shows that the balance of hardships tips "sharply" in its favor and satisfies the other *Winter* factors. *Id.* at 1134-1135.

Picayune also seeks a "stay of the decision to approve the Management Contract" (PI Mot. at 8), but it cites no legal authority for the availability of such a stay. To the extent Picayune

purports to rely on section 705 of the APA, that provision permits a court only "to *postpone the effective date* of an agency action." 5 U.S.C. § 705 (emphasis added); *see also Becerra v. United States Dep't of the Interior*, 276 F. Supp. 3d 953, 964 (N.D. Cal. 2017) ("[Section 705] permits an agency to postpone the effective date of a not yet effective rule, pending judicial review. It does not permit the agency to suspend … a promulgated rule [.]") (quoting *Saftey-Kleen Corp. v. EPA*, 1996 U.S. App. LEXIS 2324, *2-3 (D.C. Cir. Jan. 19, 1996)). The NIGC's approval of North Fork's management contract has been effective since January 2024. It is therefore not subject to a section 705 stay. Picayune cites no case—and counsel for North Fork is aware of none—where a court has retroactively "stayed" the effective date of an NIGC contract approval that is already in effect.

ARGUMENT

I. PICAYUNE IS UNLIKELY TO SUCCEED ON THE MERITS

Likelihood of success on the merits is "the most important factor in determining whether a preliminary injunction is warranted." *Garcia v. County of Alameda*, 150 F. 4th 1224, 1230 (9th Cir. 2025) (internal citations and quotation marks omitted). Picayune is unlikely to succeed on the merits for the reasons set forth in North Fork's pending motion to dismiss, which explains why Picayune's First Amended Complaint must be dismissed with prejudice under Federal Rules of Civil Procedures 12(b)(6) and 12(b)(7), and for the additional reasons below, which were not available to North Fork under Rule 12(b).

A. Picayune's Case Fails For The Reasons In North Fork's Motion To Dismiss

Picayune cannot establish a likelihood of success on the merits for the reasons set forth in North Fork's motion to dismiss, ECF No. 36-1.[2] ***First***, North Fork's sovereign immunity bars Picayune's claims against the tribe, and because North Fork is a required party that cannot be joined under Rule 19, Picayune's APA and IGRA claims must be dismissed altogether under Rule

[2] North Fork filed its motion to dismiss early to ensure that briefing would be completed in time for the motion to be heard concurrently with Picayune's PI motion. North Fork will summarize those arguments here for the Court's convenience but otherwise refers to its August 31 motion and the forthcoming reply, which will be filed no later than September 24.

12(b)(7). ECF No. 36-1 at 9-15. In addition, Picayune's omission of the Secretary as a party independently warrants dismissal of its IGRA claim for the same reason. ***Second***, Picayune's case is an impermissible—and untimely—collateral attack on the Secretary's 2012 decision to take the Madera Site into trust and 2016 issuance of Secretarial Procedures; such 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). *Id*. at 17-19. ***Third***, Picayune's APA claim fails because, when reviewing a tribe's management contract, the NIGC Chair has no statutory or regulatory authority to reject the Secretary's underlying gaming authorizations for the tribe. *Id*. at 19-21. ***Fourth***, Picayune has no cause of action under IGRA, which authorizes only "the Secretary" to initiate an action "to enforce" Secretarial Procedures, 25 U.S.C. § 2710(d)(7)(A)(iii). *Id*. at 21. ***Fifth***, even if Picayune could overcome each of these independently dispositive barriers, basic principles of federalism and administrative law prohibit unwinding the Secretary's 2012 and 2016 actions based on later state-law developments. *Id*. at 22-25. None of these fundamental defects can be overcome by further amendment.

Despite having the advantage of previewing these merits arguments over the summer when North Fork moved to dismiss Picayune's original complaint (ECF Nos. 26, 26-1), Picayune spends roughly half its argument (PI Mot. at 11-19) responding to a puzzling assortment of "anticipated" arguments, predicting that "North Fork will throw the proverbial 'kitchen sink'" at the Court (*id.* at 11). But Picayune is chasing phantoms. North Fork did not make most of these arguments, and Picayune ignores most of the arguments that North Fork *did* make (which are summarized above and, as noted, are being briefed concurrently in connection with North Fork's pending motion to dismiss).

B. Picayune's APA Claim Fails For Additional Reasons Beyond Those Available Under Rule 12(b)

Picayune advances two alternative theories to challenge the NIGC's approval of North Fork's management contract. Its primary theory is that the California Court of Appeal "recently determined" (FAC ¶ 3) that the Governor's August 2012 concurrence was "void ab initio" for purposes of California law, and that the *Picayune Rancheria* decision from December 2025 thus provides a basis for setting aside the NIGC's January 2024 approval. That theory fails under the

APA for the many reasons stated in North Fork's motion to dismiss, but most acutely because it rests on an anachronism: Under the APA, the NIGC cannot be faulted for a January 2024 decision based on a state-law legal development that had not even occurred until December 2025. Judicial review in APA cases is limited to the administrative record that was before the agency at the time it made its decision. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973); *Asarco, Inc. v. EPA*, 616 F.2d 1153, 1159 (9th Cir.1980) ("[A]gency action must be examined by scrutinizing the administrative record at the time the agency made its decision."). "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). "This rule ensures that the reviewing court affords sufficient deference to the agency's action." *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 992 (9th Cir. 2014).

With that basic problem briefed in North Fork's motions to dismiss (ECF No. 26-1 at 22-23; ECF No. 36-1 at 22-23), Picayune pivots to an alternative theory in its PI motion that turns instead on the California Court of Appeal's May 2021 decision in *Stand Up II*, which held that the concurrence had been "impliedly revok[ed]" or "annul[led]" and was thus "no longer valid" as a matter of California law. 278 Cal. Rptr. 3d at 630. Picayune argues (PI Mot. 10) that the Chair's approval can be set aside based on this earlier decision because the approval occurred "nearly three years after the Court of Appeal declared that the Governor's concurrence had been annulled."

This alternative argument presents two distinct problems for Picayune. First, it highlights that Picayune delayed bringing its PI motion ***for five years.*** Were there any validity to Picayune's theory (and to be clear, North Fork believes there is none), Picayune should have renewed its challenge to the Secretary's 2012 land-in-trust decision or 2016 issuance of Secretarial Procedures shortly after the Court of Appeal's May 2021 decision. Or, at a minimum, it should have challenged the NIGC's management-contract approval shortly after it occurred in January 2024. Instead, Picayune waited years—strategically noticing its PI hearing just days before the North Fork casino's scheduled opening. As discussed more fully below, that delay alone provides a basis for denying Picayune's motion, because "[a] delay in seeking a preliminary injunction 'implies a

lack of urgency and irreparable harm.'" *United Farm Workers v. United States Dep't of Labor*, 2026 WL 1345918, at *16 (E.D. Cal. May 14, 2026).

The second problem is that Picayune takes no account of the Indian Lands Opinion the NIGC issued after the *Stand Up II* decision—an ILO in which the Solicitor's Office of the Interior Department independently concurred. North Fork anticipated that Picayune might make this very argument and, in an abundance of caution, requested an ILO before proceeding with financing and construction of its casino. North Fork's November 2021 request explained:

> The Tribe is concerned that opponents of the Tribe's project will seek to use the California Court of Appeal's May 2021 decision to cast doubt on the Tribe's ongoing right to game on its trust land pursuant to the Secretary's Two-Part Determination, Trust Determination, and Secretarial Procedures….
>
> Accordingly, the Tribe respectfully requests that the Office of the General Counsel of the [NIGC] issue an Indian lands opinion making clear that the tribal trust lands that comprise the Madera Site fall within the definition of "Indian lands" under IGRA, 25 U.S.C. § 2703(4), and are eligible for gaming under IGRA, 25 U.S.C. § 2719(b)(1)(A). More specifically, the Tribe requests that the Indian lands opinion reaffirm that, as a matter of federal law, the Madera Site remains Indian lands eligible for gaming notwithstanding the California Court of Appeals' May 2021 ruling holding that the Governor's August 2012 concurrence was retroactively invalidated by a 2014 voter referendum.

Fink Decl. ¶ 25, Ex. A at 4-5 (November 2021 Request for Indian Lands Opinion). The NIGC issued its opinion in March 2022, which states unequivocally: "The Office of General Counsel has reviewed the status of the Madera Site and ***determined that the Madera Site qualifies as Indian lands eligible for gaming under IGRA and, therefore, the Tribe may lawfully conduct gaming on this parcel.*** The Department of the Interior Solicitor's Office has reviewed this legal opinion and concurs." Fink Decl. ¶ 26, Ex. B at 1 (NIGC Indian Lands Opinion) (emphasis added).

Picayune cannot establish a likelihood of success on the merits without overcoming the considered determinations of the NIGC's Office of General Counsel or the Solicitor's Office of the Interior Department. Yet Picayune's PI motion fails even to mention them, let alone "establish[] serious questions" that these officials erred in their analysis. *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1181 (9th Cir. 2021) ("Because [the movants] have not established

serious questions going to the merits …, we need not consider the remaining factors for an injunction."). The Court may deny the motion on this basis alone.

II. PICAYUNE HAS NOT ESTABLISHED IRREPARABLE HARM

Picayune cannot show that it is "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. ***First***, it cannot overcome its years-long delay in filing suit or seeking "preliminary" relief, given the large body of caselaw holding that delays of even two months cut against the movant on this critical factor. ***Second***, in the D.D.C. litigation, then-Chief Judge Howell found that "substantial evidence in the record supports the Secretary's determination that development on the Madera Site would allow North Fork to use gaming revenue to provide for its people, without impeding Picayune's ability to do the same," *Stand Up*, 204 F. Supp. 3d at 273 (internal quotation marks omitted). Picayune's motion provides no basis for this Court to reject the Secretary's considered judgment, which was affirmed by the D.D.C. and D.C. Circuit. ***Third***, Picayune's conclusory declarations are plainly inadequate—whether considered in light of the Secretary's prior determination or anew—and fail to substantiate the need for *preliminary* relief now, before resolution on the merits in the ordinary course of litigation. ***Fourth***, Picayune fails to explain why it cannot improve its own offerings to more effectively compete in the market. ***Fifth***, Picayune's asserted harms are largely self-inflicted.

A. Picayune Cannot Overcome Its Multi-Year Delay

Picayune's motion fails at the threshold because its own delay in filing this lawsuit and in seeking a preliminary injunction "implies a lack of urgency and irreparable harm." *Oakland Trib., Inc. v. Chronicle Publ'g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985). As this Court recently noted, a delay of even "two months weighs against finding irreparable harm." *United Farm Workers*, 2026 WL 1345918, at *16.[3] The case of *Reno-Sparks Indian Colony v. Haaland*, 663 F. Supp. 3d

[3] Other courts are in accord. *See, e.g.*, *Cutting Edge Solutions, LLC v. Sustainable Low Maint. Grass, LLC*, 2014 WL 5361548, at *6 (N.D. Cal. Oct. 20, 2014) ("[C]ourts typically decline to grant preliminary injunctions in the face of unexplained delays of more than two months[.]"); *Giving Back Fund Inc. v. Miami Mktg. Grp.*, 2011 WL 13217774, at *4 (C.D. Cal. Jan. 20, 2011) (plaintiffs' two-month delay before seeking injunctive relief "certainly implies a lack of urgency and accordingly counsels against finding a likelihood of irreparable harm"); *Prestige Transp., Inc. v. United States Small Bus. Admin.*, 2020 WL 7413708, at *2 (C.D. Cal. Nov. 2, 2020) (delay

1188 (D. Nev. 2023), is instructive. The court there held that the plaintiff tribe failed to show irreparable harm when it waited nearly two years after an agency approved the defendant's mining project before suing to challenge the project—and waited another two weeks after filing suit to move for a preliminary injunction. *Id*. at 1201-1202. The court emphasized the tribe had known the defendant was "disturbing the ground" for years yet did not bring a suit until two years after construction began. *Id*. at 1202. The delay "weigh[ed] determinatively against a finding of irreparable harm." *Id*. at 1201.

Picayune waited far longer. As noted, Picayune relies on two alternative theories for why the NIGC's January 2024 approval of North Fork's management contract should be set aside—one based on the May 2021 decision in *Stand Up II* (PI Mot. at 10), the other based on the Court of Appeal's "recent[]" December 2025 decision in *Picayune* (FAC ¶ 3). But as explained above, if the former theory had any merit (and, again North Fork believes it has none), Picayune could have sought an injunction five years ago to renew its challenges to the Secretary's 2012 and 2016 actions—or, at a minimum, in January 2024, after the Chair approved North Fork's management contract. And even under the latter theory, Picayune could have sought an injunction in December 2025—or, at a minimum, in April 2026, when the California Supreme Court denied review.

Picayune makes no attempt to explain its delay. It is not, for example, a *pro se* litigant, *see Cuviello v. City of Vallejo*, 944 F.3d 816, 833 (9th Cir. 2019), nor were the parties involved in settlement negotiations, *Ocean Garden, Inc. v. Marktrade Co.*, 953 F.2d 500, 508 (9th Cir. 1991). Picayune cannot overcome the obvious inference that its delay was purely strategic—waiting until the last possible moment to file its PI motion and noticing a hearing date just days before the casino's long-scheduled opening. As in *Reno-Sparks Indian Colony*, 663 F. Supp. 3d at 1202,

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of "more than two months" between a loan denial and the filing of suit "implie[d] the circumstances [were] not so dire as to merit preliminary relief"); *Singh v. Chestnut*, 2026 WL 114268, at *1 (E.D. Cal. Jan. 15, 2026) (petitioner's "two-and-a-half month delay" in seeking a TRO was "fatal to his motion" and indicative of no irreparable harm); *Denham v. City of Glendale*, 2026 WL 413629, at *2 (C.D. Cal. Feb. 9, 2026) (plaintiff's six-week delay in seeking return of seized vehicle after learning that her administrative claim had been denied "demonstrate[d] a lack of urgency and irreparable harm and weigh[ed] heavily against granting … preliminary injunction").

Picayune "sle[pt] on" its asserted rights—as North Fork incurred hundreds of millions of dollars in debt, publicly broke ground, constructed its casino, and hired more than 1200 employees in anticipation of the casino's planned opening, Fink Decl. ¶¶ 27-33, FAC ¶¶ 32-34—undermining any "need for speedy action," *Lydo Enterprises, Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984).

B. Picayune Cannot Overcome The Secretary's Rejection Of Its Asserted Harm

Picayune faces an especially high burden to show likely irreparable harm, because IGRA entrusts the weighing of a proposed casino's benefits and harms—including its effects on other tribes—to the Secretary under 25 U.S.C. § 2719(b)(1)(A), and the Secretary squarely rejected the harms Picayune now asks this Court to accept. As the D.C. Circuit explained, the Secretary did so "[a]fter reviewing thousands of pages of evidence over the span of seven years," *Stand Up*, 879 F.3d at 1192. In particular, "the Department concluded that the Picayune's casino could successfully absorb the expected competitive effects." *Id.* at 1190. Both the district court and the D.C. Circuit rejected Picayune's challenges to the Secretary's analysis. After reviewing "the massive record in this case"—a record that exceeded 42,000 pages—then-Chief Judge Howell noted that Picayune had "pointed to no alternative analysis concluding that the proposed casino would put Chukchansi Gold out of business or have any 'destructive competitive impact' on the Picayune Tribe." *Stand Up*, 204 F. Supp. 3d at 227 n.2, 272. To the contrary, "substantial evidence in the record support[ed] the Secretary's determination that development on the Madera Site would allow North Fork to use gaming revenue to provide for its people, without impeding Picayune's ability to do the same[.]" *Id.* at 273 (citation and internal quotation marks omitted). In sum, "the Court [found] that the Secretary was rational in concluding that the competitive impact of the North Fork Tribe's proposed casino on the Picayune Tribe would not be significantly detrimental." *Id.* The D.C. Circuit unanimously affirmed the district court's "thorough and persuasive opinion." 879 F.3d at 1179. As the party bearing the burden to show irreparable harm, Picayune's failure even to address these prior findings in its opening brief should be fatal to its motion.

C. Picayune's Declarations Do Not Support A Likelihood Of Harm

Even if the asserted competitive injuries to Picayune could be considered anew, Picayune has not carried its burden to establish a likelihood of irreparable harm. "A plaintiff must do more than merely allege imminent harm …; a plaintiff must *demonstrate* immediate threatened injury as a prerequisite to preliminary injunctive relief." *Boardman v. Pacific Seafood Group*, 822 F.3d 1011, 1022 (9th Cir. 2016). And that demonstration must show that the irreparable harm is "*likely*, not just possible." *Cottrell*, 632 F.3d at 1131 (emphasis added). When denying a preliminary injunction to prevent the Secretary from taking the Madera Site into trust in 2013, then-Chief Judge Howell observed that while Picayune may "believe[] that development of the Madera Site will be 'devastating' to the Picayune Tribe's operations," it had offered "no concrete … analysis … that would suggest that a gaming complex on the Madera Site would impair the Picayune Tribe's ability to remain profitable and self-sufficient." *Stand Up*, 919 F. Supp. 2d at 77.[4] The same is true here, 13 years later.

Rather than supply the requisite "concrete … analysis," Picayune rests on declarations that repeat, but do not substantiate, the point that "*Picayune estimates* that if [North Fork] offers class III gaming at [the Madera Site], Picayune will lose 30% to 50% of its gaming revenue[.]" ECF No. 34-3 ¶ 12 (Kamalani Decl.); *see also* ECF 34-4 ¶ 5 (Hammond Battles Decl.) ("*Picayune estimates* that it will lose 30% to 50% of its gaming revenues[.]"); ECF No. 34-8 ¶ 15 (McCombs-Esquivel Decl.) ("*Picayune estimates* that… [it] will lose, based on conservative assumptions, somewhere between 30% and 50% of its gaming revenues[.]").

"Subjective apprehensions and unsupported predictions of revenue loss," however, "are not sufficient to satisfy a plaintiff's burden of demonstrating an immediate threat of irreparable harm." *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 675-676 (9th Cir. 1988); *see also Herb Reed Enterprises, LLC v. Florida Ent. Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013) (similar); *California Pharmacists Ass'n v. Jolly*, 630 F. Supp. 2d 1154, 1164 (C.D. Cal. 2009)

[4] The court's assessment was based on Picayune's brief in support of the Stand Up plaintiffs' motion for a preliminary injunction (Picayune did not file its own separate motion). *See* 919 F. Supp. 2d at 75.

(similar). While one of Picayune's declarants hints at "[a]n analysis conducted by an independent third-party consultant," ECF No. 34-6 ¶ 10 (Alcantar Decl.), Picayune has evidently made the strategic decision not to submit that analysis to the Court. That leaves a host of very basic questions unanswered. For example:

1. ***Timing.*** When is the estimated revenue loss expected to occur? Is the loss projected to grow or diminish over time? Is it projected to occur before a final merits ruling from this Court, as required to warrant *preliminary* relief now, or only months (or years) from now, after consumer preferences develop and this Court resolves the merits of this dispute in due course?

2. ***Assumptions.*** What are the "conservative assumptions" cited in the McCombs-Esquivel Declaration?

3. ***Comparison to Picayune's estimates in the D.D.C. litigation.*** Why is the 30% - 50% estimate so much higher than the 22.2% - 32.4% estimate that Picayune relied upon in the D.D.C. litigation?[5]

4. ***Comparison to other analyses in the administrative record.*** How does Picayune contend with the record evidence that its "market share may actually decline less than 19%, 'depending on a number of factors, including [its] ability … to add features and effectively market its facilities,'" *Stand Up*, 204 F. Supp. 3d at 273 (alteration in original)?

5. ***Mitigation.*** Did the consultant identify—or even consider—ways for Picayune to mitigate its projected losses?

These questions are especially pertinent here given the prior litigation, but they would be relevant even on a blank slate, because without answers to them, Picayune has offered nothing more than "unsupported predictions of revenue loss," which are "not sufficient" to show irreparable harm. *Caribbean Marine Servs. Co.*, 844 F.2d at 675-676.

Because Picayune has not shown that its revenue losses are likely as a threshold proposition, it also cannot establish the likelihood of the asserted second-order "cascading effects"

[5] *See Stand Up*, 204 F. Supp. 3d at 272 ("[T]he Picayune Tribe cites an economic analysis … which concluded that the Madera Site casino would reduce revenues at Chukchansi Gold at least 22.2%, with losses as high as 32.4%, depending on the scope of gaming activity.").

(PI Mot. 2) on its tribal services. Picayune says that the Tribe receives "approximately $6.3 million per month in gaming revenues," and that it "provides monthly stipends of $3,000 to each eligible tribal member," ECF No. 34-8 ¶¶ 12, 16 (McCombs-Esquivel Decl.). Even if one assumed that each of its 1100 adult members received a full stipend, that still leaves $3 million per month or $36 million annually for other tribal services. Picayune's declarations assume the worst—the complete elimination of the most essential services—but the tribal resolution submitted in support of its PI motion makes clear that any *actual* reductions in stipends or services were to be determined "as more information becomes available" and based on a schedule Picayune's Treasurer and CFO had been directed to prepare for consideration by the Tribal Council. *See* ECF No. 34-3 (Kamalani Decl. Ex. B at 4).[6]

That stands in sharp contrast to the principal cases Picayune cites (PI Mot. 20) in support of its irreparable harm argument. In *Seneca-Cayuga Tribe of Oklahoma v. Oklahoma*, 874 F.2d 709, 716 (10th Cir. 1989), the court enjoined the State of Oklahoma from pursuing an injunction in state court that would have prevented the plaintiff tribes from conducting *any gaming at all* (at the time, bingo), and would have subjected the tribes to "litigation in a court that does not have jurisdiction over them"—a direct affront to their sovereign immunity (and thus their sovereignty). And in *Sac and Fox Nation of Missouri v. LaFaver*, 905 F. Supp. 904 (D. Kan. 1995), the court enjoined enforcement of a state fuel tax on tribal land—a direct incursion on tribal sovereignty in its own right, and a tax that, by its very nature, could not be mitigated through competition (as any additional gallon of fuel would be subjected to the unlawful tax). Here, by contrast, Picayune's casino will remain in business without any state or federal governmental interference—and it is *North Fork*, not Picayune, that is being subjected to litigation in violation of its sovereign immunity.

Picayune's other cases are even further afield. They likewise concern *direct* interference with tribal sovereignty or *direct* denial of social welfare benefits, neither of which Picayune faces.

[6] To be clear, North Fork in no way seeks to diminish the importance of tribal services, or the importance of gaming revenue to support them. Indeed, North Fork's *central purpose* in opening its own casino is to provide its own tribal services, just like Picayune.

In *Tohono O'odham Nation v. Schwartz*, 837 F. Supp. 1024, 1034 (D. Ariz. 1993), the court enjoined a private contractor's litigation against the tribe in state court in order to protect the tribe's sovereign immunity from litigation to which it had not consented. In *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015), the court enjoined Utah and its counties "from pursuing criminal prosecutions of Indians in state court" for conduct occurring on tribal land—in deference to tribal sovereignty and a long history of litigation settling the relevant boundaries between state and tribal jurisdiction. And in *Poarch Band of Creek Indians v. Hildreth*, 656 F. App'x 934, 944 (11th Cir. 2016), the court enjoined enforcement of a state tax assessment on tribal land—a quintessentially direct assault on tribal sovereignty—applying the very same bar on collateral attacks to federal actions taking land into trust for Indian tribes that Picayune seeks to avoid here (PI Mot. 17-18).

Picayune's social welfare cases (PI Mot. 21) are all of a piece—enjoining state regulations that *directly* denied benefits to individual beneficiaries of federal programs—and are easily distinguished on that basis. *See Beltran v. Myers*, 677 F.2d 1317 (9th Cir. 1982) (enjoining enforcement of a California rule that would deny eligibility to class of aged, blind, and disabled Medicaid beneficiaries); *N.D. v. Reykdal*, 102 F.4th 982 (9th Cir. 2024) (enjoining enforcement of a Washington rule that would have denied special education benefits to class of IDEA beneficiaries). And while it is certainly true that "[w]hen a family is living at a subsistence level, the subtraction of any benefit can make a significant difference to its budget and to its ability to survive," *Paxton v. Secretary of Health and Human Services*, 856 F.2d 1352, 1354 (9th Cir. 1988), Picayune's Tribal Council can take any such hardship into account when evaluating the schedule of options it has ordered the CFO and Treasurer to prepare, prioritizing the interests of its neediest members.

D. Picayune Has Not Shown Why It Cannot Compete In A Competitive Market

Even if one assumes that North Fork's casino will "siphon business" (PI Mot. 2) from Picayune's casino—in some unspecified amount, at some unspecified point in time—Picayune has not shown that any such harm is irreparable. Picayune's motion rests on the assumption that a loss of revenue from competition constitutes irreparable harm. But it cites no authority to that effect

and ignores that the Ninth Circuit has embraced the opposite view—i.e., that "[a] *lessening* of competition constitutes an irreparable injury under our case law." *Boardman*, 822 F.3d at 1023 (emphasis added) (affirming preliminary injunction to block acquisition that would have reduced competition in relevant market).

"'[R]evenues and customers lost to competition which can be regained *through competition* are not irreparable.'" *Central & S. Motor Freight Tariff Ass'n v. United States*, 757 F.2d 301, 309 (D.C. Cir. 1985) (per curium) (emphasis added). Courts have thus repeatedly rejected claims of irreparable injury from free-market competition. *See, e.g.*, *Novartis Pharms. Corp. v. Becerra*, 2024 WL 3823270, at *5 (D.D.C. Aug. 13, 2024) (finding no irreparable harm where "Novartis ha[d] not explained why it would not be able to recover some of its market share losses through competition, for example, by changing its marketing strategy or lowering the price"); *In re ANC Rental Corp.*, 2002 WL 1058196, at *2 (D. Del. May 22, 2002) ("[T]he marketplace should eventually be able to correct any harm suffered by Hertz and Avis."); *Coventry Health Care of Nebraska, Inc. v. Nebraska Dep't of Admin. Servs*., 2016 WL 4435197, at *4 (D. Neb. Aug. 19, 2016) (similar). An injunction is "inappropriate" where it would "hinder natural competition and normal business activities in a specialized market." *Elko, Inc. v. Peters*, 2022 WL 256975, at *6 (D. Nev. Jan. 27, 2022).

The Indian gaming context is no different. "Although the IGRA requires the Secretary to consider the economic impact of proposed gaming facilities on the surrounding communities, it is hard to find anything … that suggests an affirmative right for nearby tribes to be free from economic competition." *Sakaogan Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 947 (7th Cir. 2000). Indeed, that general proposition should be quite familiar to Picayune, as the district court applied it when denying a preliminary injunction at the outset of Picayune's litigation saga: "IGRA was intended to allow Indian tribes like the North Fork to engage in gaming on par with other tribes, not to insulate [Picayune's] Indian gaming from normal market forces." *Stand Up*, 919 F. Supp. 2d at 77 (citation and internal quotation marks omitted).

E. Picayune's Asserted Harm Is Largely Self-Inflicted

"'[S]elf-inflicted wounds are not irreparable injury.'" *Al Otro Lado v. Wolf*, 952 F.3d 999,

1008 (9th Cir. 2020) (citation omitted). That principle applies with special force here. North Fork's original gaming compact specifically provided for mitigation payments to Picayune of up to $768,750 per quarter (or $3,075,000 annually), so long as Picayune did not challenge North Fork's gaming authorizations. *See* ECF No. 34-2 (Dhillon Decl.), Ex. B at § 4.5 (Mitigation to Chukchansi Tribe). Picayune decided to forgo such mitigation payments in favor of a litigation campaign to delay the commencement of North Fork's gaming operations as long as possible. It cannot now complain about the loss of any such revenue. As then-Chief Judge Howell observed, there is "a certain irony" in that a "consequence of all the plaintiffs' efforts has been to put them in a worse, rather than better, position than they started with under the much-maligned Compact." *Stand Up*, 204 F. Supp. 3d at 256. Picayune is in no position to seek equitable relief from this Court to protect it from the consequences of its own business decisions.

III. THE BALANCE OF EQUITIES DOES NOT FAVOR PICAYUNE

Picayune cannot possibly establish that the balance of equities tips in its favor, because the essential premise of its motion is that any competition it faces is zero-sum—i.e., that North Fork's casino will "reduce gaming revenue" from Picayune's casino. PI Mot. 20. Accepting that premise, any dollar of revenue lost to Picayune is a dollar gained by North Fork (and vice versa), such that the balance between the two tribes would remain in equipoise.

The reality is even less favorable to Picayune's litigation position, as the equities in fact tip heavily in North Fork's favor. First, Picayune is the incumbent tribe in the relevant market and has been operating a successful casino since 2003, enjoying more than two decades of prosperity. By contrast, North Fork has been frozen out of the market for that same period and remains impoverished as a result. Second, North Fork is a far larger tribe with more than 3000 citizens (in comparison to Picayune's 1400), many of whom face the same dire needs that Picayune invokes here. Fink Decl. ¶¶ 7-9. The equities of Picayune's citizens do not—and cannot—weigh any more heavily in the balance than those of North Fork's. Third, and most fundamentally, any injunction would be *inherently* unbalanced, as it would "bring to a screeching halt the process of [North Fork] obtaining the economic benefits contemplated by the IGRA," *Stand Up*, 919 F. Supp. 2d at 84,

only to prevent an asserted *partial* loss of revenue from Picayune's casino. These are not equivalent harms.[7]

As then-Chief Judge Howell found in the D.D.C. litigation, "substantial evidence in the record support[ed] the Secretary's determination 'that development on the Madera Site would allow North Fork to use gaming revenue to provide for its people, without impeding Picayune's ability to do the same,'" 204 F. Supp. 3d at 273 (citation omitted). Under the APA, "[a]n agency's predictive judgments about areas that are within the agency's field of discretion and expertise are entitled to *particularly deferential* review, so long as they are reasonable." *Earthlink, Inc. v. FCC*, 462 F.3d 1, 12 (D.C. Cir. 2006). Here, Picayune has not even acknowledged the Secretary's judgments, let alone offered any basis to question their reasonableness.[8]

Whether evaluated against the backdrop of the D.D.C. litigation or anew, Picayune has not met its burden to show irreparable harm. *A fortiori*, it has not shown that the balance of harms tips "sharply" in its favor, as would be required to prevail even under the Ninth Circuit's sliding-scale approach. *Cottrell*, 632 F.3d at 1135.

IV. AN INJUNCTION IS NOT IN THE PUBLIC INTEREST

The Ninth Circuit recognizes that "[t]he public interest may be declared in the form of a statute." *Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1127 (9th Cir. 2008) (quoting 11A Wright & Miller, Federal Practice and Procedure § 2948.4, at 207 (2d ed. 1995)). It has also explained that "consideration of the public interest is constrained" where "the responsible public officials … have already considered that interest." *Id.* at 1126-1127. By its terms, the primary purpose of IGRA is "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting economic development, self-sufficiency, and strong tribal

[7] Picayune's assurance that it "is not objecting to the construction of a hotel, restaurants, or the like" (PI Mot. 2) does not alter the balance. As Picayune knows, there is presently no hotel at North Fork's casino. And if Picayune sees a promising revenue opportunity in non-gaming amenities, it is welcome to expand those offerings at Chukchansi Gold (or elsewhere).

[8] Picayune cannot overcome the unanimous judgment of the Secretary, then-Chief Judge Howell, and the D.C. Circuit by cherry-picking language from North Fork's state-court intervention papers from a decade ago. *See* PI Mot. 23. In any event, the state court litigation did indeed "affect the development of North Fork's gaming establishment"—principally by adding years of delay.

governments," 25 U.S.C. § 2702(1). The Secretary has already determined that gaming by North Fork at the Madera Site would be "in the best interest[s] of [North Fork] and its members, and would not be detrimental to the surrounding community," 25 U.S.C. § 2719(b)(1)(A). And that considered judgment was affirmed against Picayune's challenge in a "thorough and persuasive opinion," by the Chief Judge of the U.S. District Court for the District of Columbia, which was unanimously affirmed by the D.C. Circuit. *Stand Up*, 879 F.3d at 1177.

Picayune ignores all of that and rests its public-interest argument entirely on the contention that "the public interest heavily favors adherence to state law determinations." PI Mot. 24. But that ignores the narrow scope of the state law determination, which was limited to the status of the concurrence "as a matter of California law," PI Mot. 7. Indeed, the California Court of Appeal expressly recognized that North Fork's entitlement to game turned on questions of federal law, which the state appellate court—quite properly—declined to decide: "What effect, if any, California voter's annulment of the concurrence will have on North Fork's ability to operate a casino on the Madera Site presents questions of federal law[.]" *Picayune Rancheria*, 340 Cal. Rptr. 3d at 231; *see also id.* ("We cannot answer those questions with the level of certainty needed[.]"). In other words, the relevant "state law determination" was that the matter ultimately turned on questions of federal law that the Court of Appeal determined it could not answer.

Nor can Picayune elevate "the will of California voters" (PI Mot. 24) over the federal interests at stake. "Under the Supremacy Clause of the Federal Constitution, '[t]he relative importance to the State of its own law is not material when there is a conflict with a valid federal law,' for 'any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.'" *Felder v. Casey*, 487 U.S. 131, 138 (1988). This is not a stale proposition. For example, in *Geo Group, Inc. v. Newsom*, 50 F.4th 745 (9th Cir. 2022) (en banc), the Ninth Circuit held that a California law prohibiting private prisons could not be enforced to interfere with the federal government's ability to operate immigration detention centers, explaining that "California cannot exert this level of control over the federal government's detention operations." *Id.* at 751. Similarly, the Supreme Court struck down Arizona's efforts to bar undocumented immigrants from seeking work in the state, explaining that "Arizona may have

understandable frustrations …, but the State may not pursue policies that undermine federal law." *Arizona v. United States*, 567 U.S. 387, 416 (2012). Those principles apply with special force here, given the federal government's "plenary and exclusive" authority over Indian affairs. *Haaland v. Brackeen*, 599 U.S. 255, 272 (2023).

There is also a public interest in respecting the decisions of the Secretary—and the many members of the federal judiciary—who have consistently rejected variations on Picayune's challenges over many years. As then-Judge Gorsuch noted with some exasperation in the *Ute* case upon which Picayune briefly relies (PI Mot. 19): "A system of law that places any value on finality—as any system of law worth its salt must—cannot allow intransigent litigants to challenge settled decisions year after year, decade after decade, until they wear everyone else out." *Ute Indian Tribe*, 790 F.3d at 1012. That observation is especially pertinent in this posture, where Picayune scheduled its PI hearing just days before the long-scheduled opening of a tribal casino with more than 1300 employees ready to begin work—the vast majority of whom would lose their jobs if a preliminary injunction were granted. *See* Fink Decl. ¶¶ 33. The public interest does not favor rewarding such gamesmanship.

V. PICAYUNE MUST POST A BOND

Under Federal Rule of Civil Procedure 65(c), preliminary injunctions may issue only "if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The bond requirement serves to discourage injunctions based on "tenuous legal grounds" and to protect the enjoined party against the risk of being wrongfully enjoined. *Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1037 (9th Cir. 1994). While courts enjoy considerable discretion in setting the bond amount, courts are instructed to "err on the high side." *Mead Johnson & Co. v. Abbott Labs.*, 201 F.3d 883, 888 (7th Cir. 2000) ("An error in setting the bond too high … is not serious[, but] an error in the other direction produces irreparable injury, because the damages for an erroneous preliminary injunction cannot exceed the amount of the bond."). The court's discretion is properly exercised in favor of a bond where, as here, the party to be enjoined would face a "realistic likelihood of harm" if enjoined, *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th

Cir. 2009) (citations omitted), and the moving party is unlikely to succeed on the merits, *see Van de Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1326 (9th Cir. 1985).

All considerations compel a substantial bond here. Picayune has no likelihood of success on the merits, and any injunction would invite a multitude of grounds for reversal on appeal. More immediately, an injunction delaying the opening of the casino at the Madera Site would cause enormous losses for North Fork, which has pursued this project for more than twenty years, incurred hundreds of millions of dollars in debt to finance the project, constructed its casino, and hired over 1300 employees in preparation for a long-scheduled opening in mid-October. *See* Fink Decl. ¶¶ 12-34. As of August 31, 2026, the Tribe's debt obligations exceed $600 million, which is subject to a blended interest rate of approximately 10.5%, and which accrues approximately $173,000 in interest every day. *Id.* ¶ 28. The Tribe expects its debt obligations to increase by approximately $100 million by the casino's anticipated opening date, which would increase the daily accrued interest by approximately $29,000, *id.*, for a total of approximately $6 million per month in interest alone. Any delay would require the tribe to carry that debt without the gaming revenue needed to service it, shutter the casino, and lay off employees—further impoverishing the tribe.

Courts exercise their discretion to impose bonds in far less compelling circumstances. *See, e.g., Go New York Tours, Inc. v. Tea on the Strip, LLC*, 2025 WL 1577913, at *10 (D. Nev. June 4, 2025) (imposing a $500,000 bond based on the "likely cost to Defendants of ceasing operations" even though defendants "provided no financial analysis or documentary evidence" to support a bond); *CyberMedia, Inc. v. Symantec Corp.*, 19 F. Supp. 2d 1070, 1080 (N.D. Cal. 1998) (fixing a bond at $1.63 million, taking into account lost profits, out-of-pocket promotional expenses, reputational harm, and expenses associated with a product recall, despite a lack of specific evidence presented for each expense category); *Baron App, Inc. v. OpenAI, Inc.*, 820 F. Supp. 3d 881, 910 (N.D. Cal. 2026) (setting a $100,000 bond based on "expenses associated with the possible disruption to the [defendant's] product launch" despite receiving a "lack of guidance" from defendant and costs being difficult to quantify).

Picayune's own declarations already establish the minimum bounds of a bond. Using Picayune's figures, North Fork's casino would "siphon business" from Picayune's casino in the range of 30-50% (PI Mot. 2, 12), as measured against a ***net*** revenue stream to the tribe of $6.3 million per month (ECF No. 34-8 ¶12 (McCombs-Esquivel Decl.)). Taking Picayune at its word, that implies (conservatively) net revenue to North Fork in the range of $1,890,000 to $3,150,000 per month.[9] At a minimum, any bond should cover that monthly amount, multiplied by the number of months this Court sets between the issuance of any preliminary injunction and the expected date for a final ruling on cross motions for summary judgment. If the Court holds a separate bond hearing, as Picayune suggests (PI Mot. 24 n.8), North Fork would be prepared to substantiate a bond in a higher amount.

CONCLUSION

For these reasons, the Court should deny Picayune's motion in full.

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[9] That implication is conservative because it assumes that the only revenue from North Fork's casino would come from customers who would otherwise go to Picayune's—i.e., it is based on Picayune's premise that competition in this market is zero-sum.

Dated: September 11, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2026, I electronically filed the above document with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to all registered counsel.

Dated: September 11, 2026

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